## DRAFT ENVIRONMENTAL IMPACT STATEMENT

Office of Ocean and Coastal Resource Management's Review of Amendments to the Alaska Coastal Management Program

**Volume III** 

Appendices A, B, C and D





### **Index:**

Appendix A: Preliminary Approval Letter, June 22, 2005

Appendix B: NOAA Scoping Report

Appendix C: Alaska Program Amendment Submittal, w/ Attachments

Appendix D: Scoping Comments

### **Appendix D: Scoping Comments**



### United States Department of the Interior



MINERALS MANAGEMENT SERVICE Alaska Outer Continental Shelf Region 3801 Centerpoint Drive, Suite 500 Anchorage, Alaska 99503-5823

AUG - 4 2005

John R. King
Coastal Program Division
Office of Ocean and Coastal Resource Management
National Ocean Service, SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910

Dear Mr. King:

The Minerals Management Service (MMS), Alaska Outer Continental Shelf (OCS) Region, appreciates the opportunity to submit comments in response to the National Ocean Service (NOS), National Oceanic and Atmospheric Administration's (NOAA's) Notice of Intent to Prepare an Environmental Impact Statement (EIS) on the State of Alaska's (State) amendments to its coastal management program. NOAA requested comments on alternatives and potential impacts of the State's proposed amendments.

The MMS believes that the proposed amendments would provide substantial improvement to the State coastal management program, reduce duplication with other existing regulatory authorities, and provide for greater certainty in project reviews. The MMS has no recommendations for additional alternatives. The proposed amendments should provide a strong coastal management program that would likely prevent significant impacts to the environment as defined under the National Environmental Policy Act (NEPA) and properly manage the uses and resources of the coastal zone as required by the Coastal Zone Management Act and State legislation under Chapter 24, SLA 2003.

The MMS notes that the following documents may be useful to NOAA in preparing the EIS. These documents include current information on the offshore and coastal environment, updated analysis on the potential effects on the environment and the coastal zone from oil and gas activities on the OCS, and OCS lease terms and mitigation of potential effects, particularly on subsistence hunting activities.

- Final Multiple-Sale EIS for Beaufort Sea Planning Area Oil and Gas Lease Sales 186, 195, and 202 (OCS EIS/EA MMS 2003-001)
- Environmental Assessment for Proposed Oil and Gas Lease Sale 195, Beaufort Sea Planning Area (OCS EIS/EA MMS 2004-028)
- National Marine Fisheries Service Arctic Region Biological Opinion dated May 25, 2001



The MMS encourages NOAA to use these references in preparing the NEPA document on the State's proposed program amendments.

In listening to and reviewing the public testimony offered to date on the State's amended program, it is clear that local districts have the perception that they are losing their voice regarding subsistence and development issues, especially on the OCS. For this reason, MMS believes it would be helpful to describe how MMS addresses subsistence issues and seeks local involvement before proceeding with an oil and gas lease sale or approving a permit or plan for exploration, development or production activities on the OCS.

Under Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA) (16 USC 3120), Federal agencies in Alaska must evaluate the effects on subsistence uses and needs before leasing or otherwise permitting the use, occupancy or disposition of public lands. If the activity would significantly restrict subsistence uses, the federal agency must provide notice, hold public hearings, and take reasonable steps to minimize adverse impacts. While the OCS does not fall under the purview of ANILCA, MMS is guided by this process and analyzes potential impacts to subsistence activities for its NEPA documentation prior to a lease sale or approval of an OCS permit or plan.

In addition, Environmental Justice, as defined in Executive Order 12898, calls for an analysis of the effects of federal actions on minority populations with regard to subsistence. Specifically, Environmental Justice is:

The fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

Section 4-4 of Executive Order 12898, regarding the Subsistence Consumption of Fish and Wildlife, requires federal agencies to collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence, and to communicate to the public any risks associated with proposed activities on the consumption patterns.

Among the various requirements imposed by MMS to minimize the adverse impacts to subsistence uses and resources from oil and gas development on the Alaska OCS is lease Stipulation No. 5, our conflict avoidance mechanism to protect subsistence whaling and other subsistence activities. This stipulation helps reduce potential conflicts between subsistence hunters and potential oil and gas activities including reducing noise and disturbance conflicts from oil and gas operations during specific periods, such as the annual spring and fall whale hunts. It requires that the lessees meet with local communities and subsistence groups to resolve potential conflicts. The consultations required by this stipulation ensure that lessees, including contractors, consult and coordinate both the timing and siting of events with subsistence activities. The full text of the Stipulation No. 5 is enclosed.

Before proceeding with an oil and gas lease sale or approving an OCS plan, MMS will consult with federally recognized tribes consistent with the Presidential Executive Memorandum dated April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments; Executive Order 13175 dated November 6, 2000, on Consultation and Coordination with Indian Tribal Governments; and the January 18, 2001 Department of the Interior-Alaska Policy on Government-to-Government Relations with Alaska Native Tribes. In addition to government-to-government meeting, multiple opportunities for public input are provided as part of the NEPA process and the consistency review process under the federal Coastal Zone Management (CZM) program.

There are a number of other legally mandated assessments of the potential impacts of OCS activities on subsistence uses and resources. Among these are the consultation process under the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA). The MMS routinely coordinates with the U.S. Fish and Wildlife Service and NOAA Fisheries Service to ensure that offshore activities and operations comply with the ESA and MMPA and to identify mitigation and monitoring requirements for OCS activities such as seismic surveys or the construction of offshore development facilities.

To the extent that a subsistence use area is designated by either the State or District under Alaska's amended program, a federal action or authorization would need to avoid or minimize adverse impacts to subsistence uses of coastal resources and an analysis or evaluation of reasonably foreseeable adverse impacts would need to be provided with the federal consistency determination or certification (11 AAC 112.270). Accordingly, this important tool for managing federal actions or authorizations affecting coastal uses and resources would be preserved under Alaska's amended program, and would continue to guide sensible oil and gas development in the Alaska OCS.

The MMS requests that NOAA clarify its statement to the State regarding the application of District policies and designated areas. In its June 27, 2005 letter, NOAA states that 11 AAC 110.015 would apply to a federal action regardless of location, notwithstanding language limiting the application of District policies to geographic areas in other sections. Yet, presumably an equivalent action by the State, e.g., an offshore oil and gas lease sale, would not be restricted by the District policy if the State sale was outside the geographic area. This characterization of the federal effects test appears to violate NOAA's criteria for uniformity in the application of CZM enforceable policies. In the Preamble to the 2000 final rules, NOAA states that uniformity is required to ensure that States are not applying policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes, e.g., holding a Federal agency to a higher standard than a local government or private citizen (Federal Register, vol. 65, No. 237, page 77128). This is a particularly significant issue for MMS and a number of other federal agencies.

The MMS concurs that the phrase "biologically and significantly productive" may not be a clear standard for users, Districts, and affected interests to determine how productivity is measured. Defining the term would be helpful, but would require the State to amend its regulations. Alternatively, MMS recommends that the State issue guidelines to clarify how productivity is to

be measured and what factors are to be considered. For example, is productivity solely a measure of an area's quality to produce and support plants and animals (i.e., caribou calving grounds) or is it also a measure of an area's importance for passage during a significant life stage (i.e., caribou migration corridors)?

If you have questions regarding our comments or desire additional information, please contact David Johnston at (907) 344-5273.

Sincerely,

John Goll

Regional Director

#### Enclosure

cc: Bill Jeffress, Alaska DNR, OPMP Helen Bass, NOAA, OCRM Winston deMonsabert, MMS, OMM Terry Scholten, MMS, OMM

### Stipulation No. 5 - Conflict Avoidance Mechanisms to Protect Subsistence Whaling and Other Subsistence Activities

Exploration and development and production operations shall be conducted in a manner that prevents unreasonable conflicts between the oil and gas industry and subsistence activities (including, but not limited to, bowhead whale subsistence hunting).

Prior to submitting an exploration plan or development and production plan (including associated oil-spill contingency plans) to the MMS for activities proposed during the bowhead whale migration period, the lessee shall consult with the directly affected subsistence communities, Barrow, Kaktovik, or Nuiqsut, the North Slope Borough (NSB), and the Alaska Eskimo Whaling Commission (AEWC) to discuss potential conflicts with the siting, timing, and methods of proposed operations and safeguards or mitigating measures which could be implemented by the operator to prevent unreasonable conflicts. Through this consultation, the lessee shall make every reasonable effort, including such mechanisms as a conflict avoidance agreement, to assure that exploration, development, and production activities are compatible with whaling and other subsistence hunting activities and will not result in unreasonable interference with subsistence harvests.

A discussion of resolutions reached during this consultation process and plans for continued consultation shall be included in the exploration plan or the development and production plan. In particular, the lessee shall show in the plan how its activities, in combination with other activities in the area, will be scheduled and located to prevent unreasonable conflicts with subsistence activities. Lessees shall also include a discussion of multiple or simultaneous operations, such as ice management and seismic activities, that can be expected to occur during operations in order to more accurately assess the potential for any cumulative affects. Communities, individuals, and other entities who were involved in the consultation shall be identified in the plan. The Regional Supervisor/Field Operations (RS/FO) shall send a copy of the exploration plan or development and production plan (including associated oil-spill contingency plans) to the directly affected communities, and the AEWC at the time they are submitted to the MMS to allow concurrent review and comment as part of the plan approval process.

In the event no agreement is reached between the parties, the lessee, the AEWC, the NSB, the National Marine Fisheries Service (NMFS), or any of the subsistence communities that could be affected directly by the proposed activity may request that the RS/FO assemble a group consisting of representatives from the subsistence communities, AEWC, NSB, NMFS, and the lessee(s) to specifically address the conflict and attempt to resolve the issues before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests. Upon request, the RS/FO will assemble this group if the RS/FO determines such a meeting is warranted and relevant before making a final determination on the adequacy of the measures taken to prevent unreasonable conflicts with subsistence harvests.

The lessee shall notify the RS/FO of all concerns expressed by subsistence hunters during operations and of steps taken to address such concerns. Lease-related use will be restricted when

the RS/FO determines it is necessary to prevent unreasonable conflicts with local subsistence hunting activities.

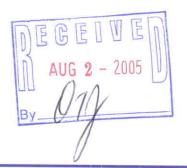
In enforcing this stipulation, the RS/FO will work with other agencies and the public to assure that potential conflicts are identified and efforts are taken to avoid these conflicts.

Subsistence whaling activities occur generally during the following periods:

<u>August to October</u>: Kaktovik whalers use the area circumscribed from Anderson Point in Camden Bay to a point 30 kilometers north of Barter Island to Humphrey Point east of Barter Island. Nuiqsut whalers use an area extending from a line northward of the Nechelik Channel of the Colville River to Flaxman Island, seaward of the Barrier Islands.

<u>September to October</u>: Barrow hunters use the area circumscribed by a western boundary extending approximately 15 kilometers west of Barrow, a northern boundary 50 kilometers north of Barrow, then southeastward to a point about 50 kilometers off Cooper Island, with an eastern boundary on the east side of Dease Inlet. Occasional use may extend eastward as far as Cape Halkett.





July 26, 2005

John King, Responsible Program Manager OCRM Coastal Program Division National Ocean Service SSMC4 Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Also via email: john.king@noaa.gov

Subject: Alaska Coastal Management Program EIS Scoping Comments

Dear Mr. King:

The purpose of this letter is to comment on the State of Alaska's application to the National Oceanic and Atmospheric Administration (NOAA) Office of Coastal Resource Management (OCRM) for amendment to the Alaska Coastal Management Program.

The City and Borough of Juneau opposed the passage of HB 191 in 2003 based on our belief that the legislation undermined a cornerstone of the program, that is, the due deference given to local districts (i.e. municipal governments and CRSA's) based on the enforceable policies of district plans. The basic architecture of the program gave local governments "a seat at the table" and a measure of local control regarding the conditions under which coastal development was allowed. Statutory amendments to the program, and the subsequent revised regulations and guidance have, in our opinion, significantly reduced these features of the program, and will have significant effects on coastal uses and resources.

Our effort in these scoping comments is to address the major themes of the revision and to highlight specific effects on the Juneau Coastal Management Program. We have voiced these concerns many times before to both OCRM and the State of Alaska. We have provided only a brief summary of these concerns here. A listing of our concerns contains at least the following:

**Public Interest**. Concentration of coastal decision making power into a single agency, the Department of Natural Resources, removes the "checks and balances" in the original ACMP that helped to balance the public interest. Specifically, elimination of the Coastal Policy Council (CPC) has reduced the opportunity for coastal districts and state agencies, other than DNR, to influence coastal decision making. The legislature created the CPC in 1978 and gave the coastal district representatives a majority of seats on the council expressly to provide for this balancing.

**Regulatory Complications.** DNR guidance for developing local enforceable policies has been confusing. The use of terms such as "flow from," "adequately address," and "avoid, minimize or mitigate" are difficult to understand, notwithstanding that the intent of the revisions to the program was to eliminate vague language. The revised ACMP regulations are not written in plain language, and they are confusing and difficult to understand. DNR's interpretation of the regulations has been confusing as well, especially with regard to acceptable enforceable policies. Additionally, the state is encouraging districts

John King, Responsible Program Manager ACMP EIS Scoping Comments July 26, 2005 Page 2 of 2

to replace enforceable policies with the powers exercised under their Title 29 and/or Home Rule powers. This will result in an added layer of review for applicants, the potential for conflicting requirements, and the potential for delays in project approvals.

**Public Process.** The regulations process lacked meaningful opportunities for public involvement or the involvement of the districts. The district/state team assembled for the initial revision to the regulations never discussed the content of the regulations. The policy direction from DNR regarding acceptable enforceable policies has been a moving target. The current interpretation of acceptable enforceable policies is much different than what DNR told the legislature during testimony on HB 191 in 2003. The proposed changes reduce public participation by eliminating many projects from ACMP reviews (by separating DEC review, reducing local enforceable policies, and expanding the A and B exemption lists), removing provisions for citizen lawsuits, and providing only minimum public noticing.

Effects on the JCMP. Contrary to assertions made by the state during the hearings on HB 191, CBJ will lose the Juneau Wetlands Management Plan (JWMP), since state standards and the revised regulations (and their interpretation) does not allow local policies to use the terms "avoid, minimize, or mitigate." A wetlands plan cannot be implemented through the program without these terms. The JWMP, adopted in 1992, is based on ten years of scientific research and offers specific management protocols designed to minimize impact on high value wetlands and promote development on low value wetlands through an expedited process. This plan was developed to provide a more predictable and prescriptive permit process than the Corps of Engineers offered, which is what the state promoted in the ACMP changes.

Keeping the JWMP in our local land use plan is not a substitute for the due deference of the ACMP, since we lose a value, programmatic link to Corps of Engineers permitting. Besides the JWMP, CBJ will lose many other valuable policies on issues such as streamside setbacks, coastal development, and seafood processing. DNR's excessively narrow regulations (and subsequent interpretations) exceed the intent of HB 191, where legislators were promised that districts would retain a meaningful role based on a broad interpretation of enforceable policies. In our view, the state has failed to address the concerns of the districts, with the result that meaningful district participation in the program is seriously eroded. Likewise, the ability of districts to provide for resource protection, where this is important to local residents, is compromised, and our ability to work cooperatively with local developers to identify appropriate local solutions has been hampered.

Thank you for this opportunity to comment.

Sincerely

Dale Pernula, Director

Community Development Department

(907) 586-0757

E-mail: Dale\_Pernula@ci.juneau.ak.us

Cc: Honorable Bruce Botelho, Mayor Rod Swope, City and Borough Manager

### Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207 Anchorage, Alaska 99503-2035 Phone: (907)272-1481 Fax: (907)279-8114 Judith Brady, Executive Director

### Alaska Oil and Gas Association

### Comments to the Office of Ocean and Coastal Resource Management

On

# Alaska Coastal Management Program Amendments Environmental Impact Statement Scoping Meetings July 27, 2005

Good Morning. My name is Judy Brady and I am the Executive Director of the Alaska Oil and Gas Association (AOGA), a private non-profit trade association. AOGA is pleased to have this opportunity to provide comments to the Office of Ocean and Coastal Resource Management on the scope of the Alaska Coastal Management Program Amendments Environmental Impact Statement. AOGA is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

When the Alaska Coastal Management Act (ACMA) was passed by the legislature in 1977 (the same year the Clean Water Act was passed by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations of a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

AOGA Testimony ACMP Amendments/EIS Scoping Meetings July 27, 2005 Page 2

The level of environmental protection of coastal resources has not changed as a result of the ACMP amendments. Rather, duplication, complexity and uncertainty have been removed from the ACMP. The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. The resulting permitting efficiency and clarity fully comport with the CZMA mandates and regulations to make coastal management work in unison with State and local programs. In our written comments we will include an annotated list of laws and regulations that may apply to development projects in Alaska that demonstrate the above comments on the comprehensive Alaska regulatory framework. OCRM should carefully analyze that list in considering the environmental implications of the ACMP reforms.

Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Layered on top of all of these permits are the often duplicative provisions of the ACMP, which mandates that certain of those federal and state permits (excluding now ADEC under the ACMP reforms) cannot be issued until they are found consistent with the standards of the ACMP and applicable coastal district enforceable policies. These standards and policies often triggered an unnecessary second look at issues already regulated under other federal and state laws and regulations. HB 191 and its implementing regulations address this duplication and complexity by establishing bright lines for the scope and applicability of consistency reviews.

The ACMP is not a permitting program, but over the years its administration and litigation risks have made it appear so. This concern was another reason for passage of HB 191. Prior to the passage of HB 191, the ACMP had become a cumbersome complex process that hindered timely issuance of permits. The state standards duplicated federal and state law and many district policies duplicated the requirements of both state policies and certain federal and state regulatory programs. This overlap led to confusion and compliance complexity. The permitting schedule under ACMP had become the victim of the slowest permit.

AOGA supported HB 191 because it simplified the ACMP process. Most importantly, it recognized the significant evolution of environmental protection provided by federal and state regulatory programs since the inception of the ACMP. In particular, it made ADEC permits and authorizations automatically consistent upon issuance. Those permits no longer hold up the ACMP review or dictate its schedule.

AOGA Testimony ACMP Amendments/EIS Scoping Meetings July 27, 2005 Page 3

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

The other significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured though legislation an extension to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. The role of coastal districts in the permitting process is unchanged - permits cannot be issued without an affirmative consistency finding. Further with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons mentioned in my testimony, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards.

Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.

#### Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207 Anchorage, Alaska 99503-2035 Phone: (907)272-1481 Fax: (907)279-8114 Judith Brady, Executive Director

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AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

When the Alaska Coastal Management Act (ACMA) was passed by the legislature in 1977 (the same year the Clean Water Act was passed by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations of a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

AOGA Testimony ACMP Amendments/EIS Scoping Meetings July 27, 2005 Page 2

The level of environmental protection of coastal resources has not changed as a result of the ACMP amendments. Rather, duplication, complexity and uncertainty have been removed from the ACMP. The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. The resulting permitting efficiency and clarity fully comport with the CZMA mandates and regulations to make coastal management work in unison with State and local programs. In our written comments we will include an annotated list of laws and regulations that may apply to development projects in Alaska that demonstrate the above comments on the comprehensive Alaska regulatory framework. OCRM should carefully analyze that list in considering the environmental implications of the ACMP reforms.

Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Layered on top of all of these permits are the often duplicative provisions of the ACMP, which mandates that certain of those federal and state permits (excluding now ADEC under the ACMP reforms) cannot be issued until they are found consistent with the standards of the ACMP and applicable coastal district enforceable policies. These standards and policies often triggered an unnecessary second look at issues already regulated under other federal and state laws and regulations. HB 191 and its implementing regulations address this duplication and complexity by establishing bright lines for the scope and applicability of consistency reviews.

The ACMP is not a permitting program, but over the years its administration and litigation risks have made it appear so. This concern was another reason for passage of HB 191. Prior to the passage of HB 191, the ACMP had become a cumbersome complex process that hindered timely issuance of permits. The state standards duplicated federal and state law and many district policies duplicated the requirements of both state policies and certain federal and state regulatory programs. This overlap led to confusion and compliance complexity. The permitting schedule under ACMP had become the victim of the slowest permit.

AOGA supported HB 191 because it simplified the ACMP process. Most importantly, it recognized the significant evolution of environmental protection provided by federal and state regulatory programs since the inception of the ACMP. In particular, it made ADEC permits and authorizations automatically consistent upon issuance. Those permits no longer hold up the ACMP review or dictate its schedule.

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In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

The other significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured though legislation an extension to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. The role of coastal districts in the permitting process is unchanged - permits cannot be issued without an affirmative consistency finding. Further with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons mentioned in my testimony, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards.

Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.



July 26, 2005

Mr. John R. King, Responsible Program Officer Coastal programs Division Office of Coastal Resource Management National Ocean Service SSMC4, Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Subject: Environmental Impact Statement (EIS) for the Proposed Approval of Amendments to the Alaska Coastal Management Program (ACMP)

Dear Mr. King:

The following comments are provided regarding the subject EIS and are intended to be formal comments on the amended program. It is important to receive these comments in the context of what they represent. The Aleutians West Coastal Resource Service Area (AWCRSA) Board speaks for the coastal program for the entire western Aleutian area from Unalaska Island west to Attu Island, an area that is 20 to 60 miles in width and roughly 1000 miles long. It is bounded by the Pacific Ocean to the south and the Bering Sea to the north and has a wealth of natural resources including some of the richest fishing grounds in the state and the nation. Like the geography, the communities of the region are also diverse. Unalaska, the number one seafood processing port in the nation for many years, has a population of over 4000 people, and Nikolski, a tribal government, has 39. Both of these communities along with Atka contribute members to the AWCRSA Board. Please consider the following comments.

Under the ACMP, communities address local coastal issues through coastal district management plans. In 2003, the Alaska legislature passed HB 191 that substantially revised the state's coastal management program. We understand the program changes were to accomplish the following:

- provide clear and concise guidance
- provide greater uniformity in coastal management regulations throughout the state
- relate to matters of local concern, and
- not duplicate state and federal legislation

All local district plans are in the process of revision to meet the requirements of HB 191 and since July of last year our district has been working with the state to amend our program and craft acceptable policies. However, while we have been working diligently at our program revision, we have found the process

complicated by regulations that are not clear and concise but rather inadequate, conflicting, and unclear. The program amendment and adopted regulations have eroded the previous ACMP framework into a spider web of complex and conflicting requirements, prohibitions, and definitions that have left local districts hanging by a thread. We have several specific concerns regarding the changes to the ACMP.

The amended program involves a major overhaul of the statewide standards. Several of the standards are eliminated, removing them from statewide purview, and a number of other standards are substantially weakened. Some specific standards, such as recreation and subsistence, only have substance through the local coastal district programs as there are no implementing authorities within the state. It is necessary for local coastal district programs to designate these areas to be able to subsequently develop policies that would apply within the designated boundaries. Since the revision and subsequent to the state review of our draft amended plan, we have been unable to craft an enforceable subsistence policy that is acceptable to the state. Additionally, the AWCRSA has requested a legal interpretation from the state on whether we even have the regulatory authority to designate areas without borough status. The state has agreed that the question deserves an opinion from the Attorney General. The results of this determination could have significant consequences for designations in vast areas of the coast located in the unorganized areas of the state. Prior to the revision of the coastal program local policies had "blanket" applicability throughout the district and would be considered during federal activities.

The coastal program should allow districts to address upland areas important to wildlife and other coastal resources as it has in the past. The habitat standard defers greatly to water quality issues, which are DEC territory, but does not provide a mechanism to address fishery resources that are important. While water quality is certainly one factor, it is not the only factor that should be considered. Moving historic, prehistoric, and archaeological resources to a subject use removes these areas from state purview and could prove detrimental to these irreplaceable resources. Also, the mining and mineral processing standard is gone and not replaced with a subject use or any other planning mechanism. Mining activities can have significant effects on coastal uses and resources and this activity should continue to be addressed by the ACMP.

Matters regulated by the Alaska Department of Environmental Conservation (DEC) have been removed from the previous ACMP review process and there now exists a prohibition for districts to establish policies for air and water quality issues. The AWCRSA is opposed to the fractioning out of DEC regulated matters and asserts that such an action will make it impossible to consider the full effects of a project and can potentially result in increased impacts to coastal resources. We have found the single-agency ACMP reviews coordinated by DEC to be problematic and essentially symbolic since passage of HB 191.

Through the amended program the state has created confusion and an nearly impossible threshold for a local coastal district to raise a matter of local concern and write local policies. The AWCRSA began our amendment process with 41 enforceable policies. Last July sixteen policies were recommended for deletion with the remainder requiring documentation, rewording, or incorporation of acceptable elements into other retained policies. With this goal in mind, the AWCRSA completed the policy revisions and then received regulatory interpretations where it became apparent that additional revisions would be The additional revisions were completed and the draft document submitted for review. As a result of comments received from the state the draft document was further cleansed of five additional unacceptable policies. AWCRSA amended coastal management plan now contains a total of fourteen enforceable policies. The local component is one of the primary mechanisms for implementing a state coastal program. State agencies have historically relied on local expertise in making consistency determinations and applicants depend on knowledgeable participants in the review process. The elimination of our ability to construct enforceable polices will preclude us from meaningful participation in the consistency review process. This can only result in a shortchanging of the applicant and the local citizens represented by our coastal district.

We feel it is paramount to continue to retain a coastal management program that complies with federal law and meets the needs of the Alaskans represented by our local coastal district. The residents of the AWCRSA desire a working partnership with state and federal agencies and meaningful participation in the consistency review process. While we do not agree that the current amended program provides clear and concise guidance, provides greater uniformity in coastal management regulations throughout the state, or adequately relates to matters of local concern, we do desire a continued role in the coastal process and that can only come through federal approval of an amended program.

We appreciate the opportunity to comment and trust that the EIS process will result in a successful conclusion that will ultimately be satisfactory to all parties.

Sincerely,

Karol Kolehmainen Program Director

Cc: AWCRSA Board of Directors



### Lake and Peninsula Borough

P.O. Box 495 King Salmon, Alaska 99613

Telephone: (907) 246-3421 Fax: (907) 246-6602



August 1, 2005

John King, Responsible Program Manager Coastal Programs Division Office of Coastal Resource Management (OCRM) National Ocean Service SSMC4, Room 11305 1305 East-West Highway Silver Springs, MD 20910-3281



Subject: Comments on Intent to Prepare an Environmental Impact Statement (EIS) for approval of Amendments to the Alaska Coastal Management Program.

Dear Mr. King:

The purpose of this letter is to comment on the intent to prepare an EIS for approval of Amendments to the Alaska Coastal Management Program.

The Lake and Peninsula Borough is requesting this Impact Statement evaluate how these sweeping changes to the State of Alaska's Coastal Management Program will have impact on Subsistence, Local Control, Habitats, Mining, Air Land and Water Quality Issues, Energy Facilities, implementation of Title 29 Planning Powers and the overall cumulative effects of these changes.

Each community within our Borough is located in the Alaska Coastal zone on salt water shoreline or on the shoreline of a fresh water lake. Enclosed is an informational video of the Lake and Peninsula Borough that will emphasize the importance of the habitat to our economy and subsistence life style. Also enclosed is the Visitor Guide for the Bristol Bay and Alaska Peninsula for your review and consideration during this EIS. For statistical information on our Borough see attachment 1 to this document which is a detailed six page description of the Lake and Peninsula Borough. Also attached is a map of our Borough that will help demonstrate how this EIS will affect our Borough in the future.

In 2003 the Alaska Legislature passed House Bill 191 that substantially revised the state's coastal management program. As a result of that bill and the recent 2005 Senate Bill 102 the program has changed dramatically. As a result of HB 191 the State of Alaska is in the process of amending the State Coastal Management Program which

directly affects the Lake and Peninsula Borough. This program change required the writing of new regulations for coastal districts and the state to follow in implementing the program. We understand the program changes were to accomplish the following:

- · provide clear and concise guidance
- · provide greater uniformity in coastal management regulations throughout the state
- · relate to matters of local concern, and
- not duplicate state and federal legislation

The Borough is in the process of revising its plan to comply with the required revisions.

The citizens of the Borough live and subsist on our coastline and find that resource very important to their livelihood and survival. They firmly agree this is a matter of local concern. We are strongly opposed to the sweeping and drastic changes the State of Alaska is making to the current program as it is not very clear, does not allow local input, the guidance is very confusing and difficult to comprehend and follow. We do not feel the new program provides greater uniformity in coastal regulations.

The changes directly affect the Lake and Peninsula Borough as the new regulations do not provide the adequate protection contained in the previous program for our fresh water lakes. Specifically, we are concerned that the new program will not give us the control we have over protecting the waters and shoreline of Lake Iliamna. The Borough Coastal Management Plan currently in effect, had 57 policies addressing coastal management. The Borough submitted a draft plan to the State for review with only 27 policies in our interpretation of the new regulations and statutes. The State reviewed those draft policies and stated only 10 of those policies could be approved under their interpretation of the new regulations. We do not have confidence this will provide the protection needed for our pristine coastline to be maintained at its current state.

We are in the process of re-writing policies that will provide protection for Lake Iliamna as a special designated area. However, this is subject to approval by the State when our final plan is submitted for review.

Lake Iliamna is a very special body of water. It is an inland freshwater sea and is the largest fresh water lake in Alaska. It is home to the largest natural spawning grounds for red salmon in the world. It is the only lake in the United States that has fresh water seals inhabiting the lake. This lake is one of two in the world with this distinction. The other is in Russia.

Changing the current enforcement powers the Borough has on Lake Iliamna to the new Standards the State is requiring us to follow should require its own separate Environmental Impact Statement. For example, if projects to install small boat harbors in the communities of Egegik (located on Salt water) and a small boat harbor in the community of Igiugig (located on Fresh water) the consistency review would not be the same. Even if the projects were designed identical with the same specifications. Under the existing program they would both require a consistency review. Under the states new

program the one in Igiugig would not. We strongly request an evaluation of how two identical projects would be reviewed for consistency under the new regulations versus the old regulations and evaluate what local input would be taken or considered, especially for the project in Igiugig on Lake Iliamna a fresh water lake.

The amended program has completely changed the statewide standards to the point that local districts have no local input. Several of the standards were completely eliminated from the program and many other standards were weakened. We strongly encourage this EIS to evaluate the impacts of changes to each standard.

- <u>Changing Laws:</u> For each change to the ACMP that reduces protections for coastal resources, the EIS should include a discussion of how other laws can or cannot make up for this loss.
- <u>Subsistence</u>: Several changes have weakened this standard. Provisions to assure access to subsistence resources have been removed. District policies can only be established for areas designated for subsistence use. Policies may only address the use and not the resource itself. It remains to be seen what evidence DNR will require for establishment of a subsistence use area (subsistence use changes from year-to-year due to changes in migration patterns). Comments on draft plans by DNR state that the "avoid or minimize" clause in the standard adequately addresses most issues and that districts could only "allow or disallow" a use. The standard does not include a mitigation clause even though many development projects will have adverse impacts where mitigation would be appropriate.
- Habitats: The proposed standard removes the requirement to maintain and enhance habitats unless a project meets the three-part test. DNR is interpreting the management measures in subpart (b) of the standard as the only matters that can be addressed for each habitat listed. Most references to living resources have been removed from the management measures in subpart (b). DNR is saying that the "avoid, minimize or mitigate" clause in the standard adequately addresses all impacts to habitat (but it says that districts can establish policies that "allow or disallow" uses). Upland habitats have been removed as a special category in the standard. Districts may only establish policies for areas they designate as important habitat (it will be difficult to establish important habitats because of the new requirements). State law is inadequate to protect habitats (the Office of Habitat Management and Permitting has only two narrow laws and no regulations).
- Mining: The mining standard has been replaced by a sand and gravel extraction standard that only applies to areas with saltwater or barrier islands. Placer mining and hard rock mining are no longer a "subject use" of the ACMP.
- Energy Facilities: DNR says that the only way a district may establish policies for energy development is to designate an area as suitable for energy development. Since districts do not have access to information available to

industries, they may not know where oil and gas resources exist. Many districts would not support offshore development, but under DNR's interpretation of the law, they could not establish policies for offshore oil development unless they designated the area as suitable for development.

<u>Consistency Reviews:</u> We strongly urge this EIS to also evaluate how consistency reviews are now accomplished to determine the possible effects of the changes on our coastlines. The evaluation should include an analysis of the effects of:

- Limiting reviews to the coastal zone (formerly, any project with potential impacts to coastal uses or resources was reviewed),
- Changes were made in the June 2005 changes to the regulations to make it appear
  that DNR will review federal activities outside the coastal zone (AS 46.40.096(k)

   – (l) removes the ability to conduct a consistency review for any activities inland
  of the coastal boundary),
- Legislation has eliminated coal bed methane projects from consistency reviews
  even though these resources require more wells and more water usage than typical
  oil and gas developments,
- The mandate in HB 191 to add projects to the A and B lists (after the ABC list is updated, will allow few opportunities for consistency reviews), and
- The new 90-day limit for consistency reviews will not be adequate to review the
  effects of some projects, especially if the ACMP consistency review occurs before
  completion of an environmental assessment or an EIS,

**Reduced Local Control**: We also strongly request the EIS evaluate local control. New measures will reduce the ability of coastal districts to manage coastal resources and uses, and it can be expected that there will be additional impacts.

- Local participation in the ACMP gives an incentive for local governments and CRSAs to carefully monitor projects and their impacts. With a diminished role for districts, impacts will likely increase.
- New requirements for "prescriptive" policies will eliminate the current process
  where districts negotiate with an applicant to find project-specific solutions to
  issues that are tailored to the specific proposal and area of the development.
- The elimination of Coastal Policy Council (CPC) removes districts from the coastal decision-making process (districts had the majority of votes on the CPC).
- The June 2 description of the ACMP states that districts will no longer have representation on the ACMP Working Group.
- Some districts have already dropped out of the program and are not revising their plans.

<u>Air and Water Quality Issues:</u> The EIS should include a thorough analysis of the effects of removing matters regulated by the DEC from the consistency review process.

DNR is interpreting the statutory change to mean that districts may not have any
policies for air or water quality matters, even for matters not regulated by DEC.

- Air and water quality issues are closely connected to other coastal resources and uses, and removal of them from consistency reviews will remove the ability to address some of the most important impacts of a project from the consistency review.
- Activities regulated by DEC will no longer be reviewed for consistency with other statewide standards for district enforceable policies.
- DNR has not been able to adequately describe the scope of review for projects that require both a DEC permit and federal agency permits (e.g., a DEC 401 certification and either an EPA NPDES permit or a Army Corps of Engineers 404 permit).
- There appears to be no public process for districts to participate in consistence comments for air and water quality aspects of Outer Continental Shelf (OCS) projects because DEC has no authority for federal OCS waters.

<u>Potential Outer Continental Shelf (OCS) Projects:</u> Oil and gas projects provided the impetus for the state to establish the original ACMP, but the new changes appear to reduce the ability of the state or coastal districts to influence these projects. Environmental impacts will likely increase.

- DNR maintains that districts may not establish any policies for air or water quality, but DEC has no authority to regulate OCS matters, including air and water quality.
- There is no process for districts to participate in DEC's consistency finding for OCS projects under 11 AAC 110.010(e).
- Reduced ability for district enforceable policies on other matters will weaken its ability to influence OCS activities.
- The federal OCS lands act does not include sufficient measures for local or state involvement in OCS activities.

### **<u>Public Participation:</u>** The proposed changes reduce public participation by:

- Eliminating many projects from ACMP reviews (new additions to the A or B lists and coal bed methane projects),
- Removing provisions for citizen lawsuits for ACMP consistency determinations (without an incentive to avoid lawsuits, the state may cut corners), and
- A directive by the chief-of-staff to state agencies to only do the minimum public noticing that is required by law (many DNR permits do not require a public notice).

<u>Title 29 Powers:</u> We strongly request this evaluation study the impacts of how the state has repeatedly stated that our Borough can implement Title 29 Planning Powers to replace the areas coastal management will no longer have influence over. Specifically, areas that will be removed from our existing plan. In consultation with our attorney he advises we cannot fill the voids by the utilization of Title 29 Planning Powers. We are a very young Borough and our coastal management plan interrelates with many other Borough ordinances that will have to be rewritten at our own expense and time. The state

has not provided any additional funding for our costs mandated by the new legislation. We request this additional expense be included as a portion of the evaluation of Title 29 Powers.

<u>Cumulative Impacts:</u> The cumulative impacts resulting from the changes should be evaluated in the EIS. While some of the changes may not be significant individually, they will have substantial impacts when combined with the other changes. Also, the cumulative impacts of projects that will no longer undergo a consistency review should be evaluated.

<u>Definitions:</u> The changes to the definitions should be analyzed to determine what environmental effects might occur under the proposed changes. For example, the definition of marine waters no longer includes a reference to living resources.

In summary please take the time to view the video and visitors guide. The Lake and Peninsula Borough would like to emphasize the importance of close evaluation of how these sweeping changes to the State of Alaska's Coastal Management Program will effect Subsistence, Local Control, Habitats, Mining, Air Land and Water Quality Issues, Energy Facilities, implementation of Title 29 Planning Powers and the overall cumulative impacts of these changes.

Thank you for the opportunity to comment on this very important issue. If you have questions regarding our scoping comments please contact Marv Smith at 907-246-3421.

Sincerely,

Glen Alsworth, Sr.

Mayor

Attachment 1 - Borough Description

ElR alaward

Attachment 2 - Borough Map

CC: L&P Borough Assembly

L&P Borough Planning Commission

All Coastal Districts

Helen Bass

NOAA/OCRM

Bill Millhouser

NOAA/OCRM

ADNR/OPMP

ADF&G

Home Assembly Planning Commission School District Manager Clerk's Office Community Development Economic Development Finance

Located southwest of Anchorage along the Alaska Peninsula, the Lake and Peninsula Borough encompasses approximately 23,782 square miles of land (roughly the size of West Virginia) and 7,125 square miles of water, extending 400 miles from Lake Clark in the north to Ivanof Bay in the south. It contains three National Parks (Lake Clark National Park & Preserve,



OAlaska Division of Community & Business Development

Katmai National Park & Preserve and Aniakchak National Monument Preserve); two National Wildlife Refuges (Becharof NWR and the Alaska Peninsula NWR); and numerous designated Wild and Scenic Rivers and State Critical Habitat Areas

The Lake and Peninsula Borough is geographically and ecologically diverse. It is bordered on the west by Bristol Bay and on the east by the Pacific Ocean. The Bristol Bay coast is comprised of low lying wetlands and the rugged Pacific coast is

dominated by numerous volcanoes of the Aleutian range which runs the length of the Borough from Lake Clark to Ivanof Bay. Iliamna Lake, located in the north, is the largest fresh water lake in Alaska and the second largest in the United States. Iliamna Lake has one of only two colonies of freshwater seals in the world. Becharof Lake, located in the

Bristol Bay region, is the second largest fresh water lake in Alaska. These lakes provide nurseries to the largest red salmon runs in the world

The Lake and Peninsula Borough provides large amounts of high Brown bears at Katmei National Park DE. Sommer, Alaska Division of Tourism quality habitat that support a phenomenal amount of flora and fauna. The Bristol Bay region



is recognized as a world leader in salmon productivity. Commercial fishing, sport fishing and hunting, bear viewing, recreation and tourism, and subsistence are important economic activities that rely on the bounty of the Borough's landscape. Salmon spawning streams attract some of the largest concentrations of brown bear in Alaska. Approximately 10,000 brown (grizzly) bears populate the region, making them more numerous than people. Abundant moose and caribou inhabit the region. Other mammals include wolves, wolverines, river otters, red fox, and beaver. Sea otters, sea lions, harbor seals and migratory whales inhabit the shoreline and offshore waters. Coastal estuaries are home to waterfowl while nesting eagles, peregrine falcons, and thousands of seabirds inhibit the sea cliffs.

#### **GOVERNMENT**



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The Lake and Peninsula Borough was incorporated in April 1989 as a home-rule borough with a manager form of government. A sevenmember Assembly acts as the legislative body for the Borough. Six members are elected by district and the Mayor is elected at large.

Staff consists of five full-time employees: Borough Manager, Borough Clerk/Special Projects Coordinator, Finance Officer, Community Development Coordinator, and an Economic Development Coordinator. The Borough also utilizes the

services of legal council, a lobbyist, and a fisheries advisor who work on specific projects. The Borough currently exercises limited powers and services which include public schools, area-wide planning and land use regulation, technical assistance on government and economic development, and assistance on capital and infrastructure development. The

Borough is predominately rural and contains seventeen communities, six of which are incorporated as second-class cities. Village or Tribal Councils govern the remaining eleven communities.

The Borough levies three local taxes: a 2% Raw Fish Sales and Use Tax, a 6% Hotel/Motel Room Tax, and a severance tax on the harvest of certain natural resources within the Borough. In addition, the Borough requires anyone who conducts guided activities within Borough boundaries to purchase a guiding permit based on the amount of visitors/clients they have.

The Borough Assembly has adopted conservative budgeting practices including the "forward funding" method, which precludes it from adopting a general fund budget that is more than the general fund balance of the previous year-end. The Borough's General Fund balance at the end of FY02 was \$3,490,558. The FY03 General Fund operating budget (excluding grants) is \$2,713,000.

### HISTORY

The Lake and Peninsula Borough region has been inhabited almost continuously for the past 9,000 years. The area is rich in cultural resources and diversity. Yup'ik Eskimos, Aleuts, Athabascan Indians, and Inupiaq people have jointly occupied the area for the past 6,000 years. Russian explorers came to the region during the late 1700's. The late 1800's brought the first influx of non-Native fishermen and cannery operations. A flu epidemic in 1918 was tragic to the Native population. Reindeer were introduced to assist the survivors, but the experiment eventually failed. In the 1930's, additional disease epidemics further decimated villages. After the Japanese attack on Dutch Harbor during World War II, numerous military facilities were constructed on the Alaska Peninsula including Fort Marrow at Port Heiden.

#### **ECONOMY**

Commercial fishing and fish processing are the most significant sectors of the economy within the Borough, which contains three of the State's most important salmon fishing districts: Egegik and Ugashik on the Bristol Bay, and Chignik on the Pacific coast. This industry provides approximately 90% of all locally generated tax revenue for the Borough. The majority of Borough residents rely upon commercial fishing as a primary source of cash income. Seven shore-based



Fishing in Lake Clark
© Richard W. Montague
Alaska Division of Tourism

processors and numerous floating processors operate within Borough boundaries, generally importing their workforce from outside the area.

Tourism and recreational activities are the second most important industry in the Borough, and are

rapidly increasing in economic importance. The Borough contains over 60 hunting and fishing lodges and approximately 100 professional guides are registered to operate within Borough boundaries.

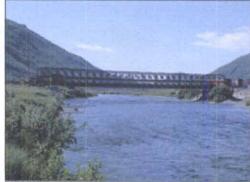
### CLIMATE

The area experiences a transitional climate. Average summer

temperatures range from 42 to 62; winter temperatures range from 6 to 30. Annual precipitation is 24 inches, with 54 inches of snow.

### TRANSPORTATION

The Lake and Peninsula Borough contains seventeen small and widely scattered communities.



and Chinkeleyes River Bridge
Williamsport - Pile Bay Road
Photo coursey of Mary Smith

Only two, Iliamna and Newhalen, are connected by road. There are two regional roads located in the Borough: the Iliamna - Nondalton Road and the Williamsport - Pile Bay Road. Scheduled air service provides transportation of passengers to the region's hubs in Iliamna and King Salmon. Air taxi and charter service transport passengers from the hubs to local communities. Heavy cargo and durable goods are transported to Borough communities by ship, barge or ferry. Chignik is the only community served by the Alaska Marine Highway System, calling on the community about 6 times per year beginning in April and ending in October. The



Chignik Bay Photo coursesy of Mary Smith

Williamsport - Pile Bay Haul Road provides access from the Pacific side to the Iliamna Lake communities. Perishable goods and time-value cargo are shipped by air, typically through King Salmon, Iliamna or Port Heiden.

### COMMUNITIES

Borough communities have a combined year-round population of approximately 1823 people, 79.7% of which are Alaska Native, mostly of Athabascan Indian, Aleut, or Yup'ik Eskimo decent. Communities located within Borough boundaries include: Chignik Bay, Chignik Lagoon, Chignik, Lake, Egegik, Igiugig, Iliamna, Ivanof Bay, Kokhanok, Levelock, Newhalen, Nondalton, Pedro Bay, Perryville, Pilot Point, Port Alsworth, Port Heiden, and Ugashik.

To learn more about individual communities, click on the community name to access the Alaska Department of Community & Economic Development's Alaska Community Database.

Chignik Bay

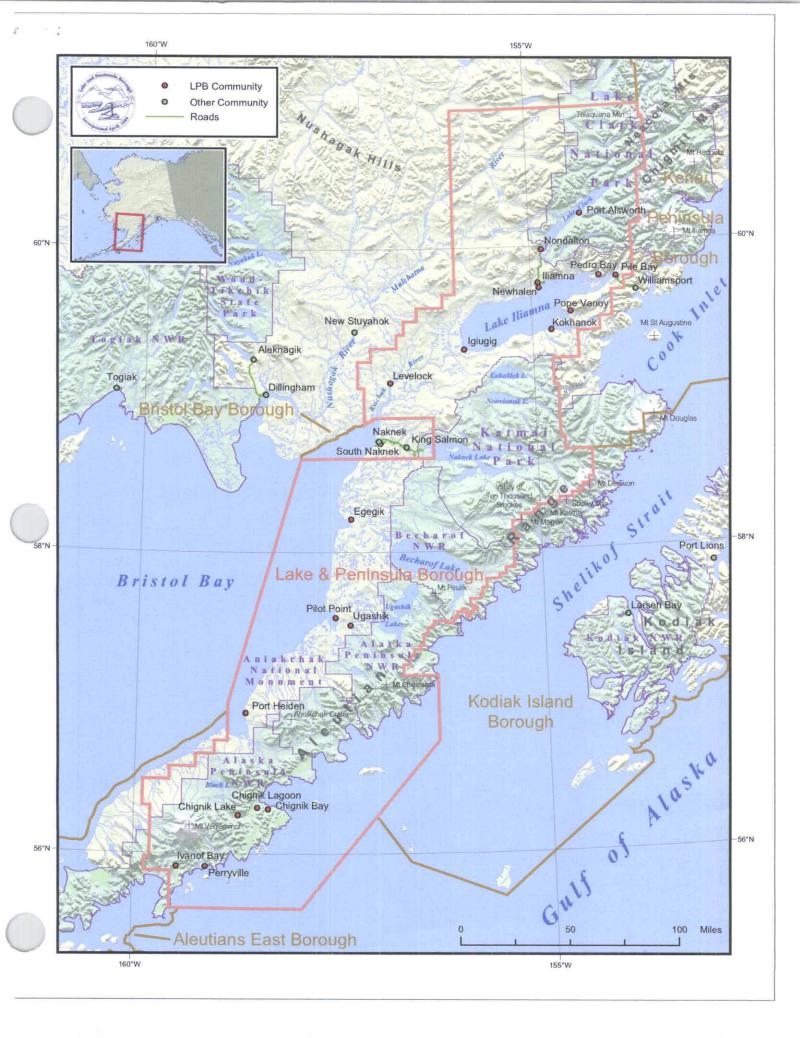
- 10. Newhalen
- 11. Nondalton

- 2. Chignik Lagoon
- 3. Chignik Lake
- 4. Egegik
- 5. Igiugig
- 6. Iliamna
- Ivanof Bay
- 8. Kokhanok
- 9. Levelock

- 12. Pedro Bay
- 13. Perryville
- 14. Pilot Point
- 15. Port Alsworth
- 16. Port Heiden
- 17. Ugashik

Source: Alaska Dept. of Community and Economic Development <a href="https://www.dced.state.ak.us/cbd/commdb/CF\_CIS.htm">www.dced.state.ak.us/cbd/commdb/CF\_CIS.htm</a>

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Subject: Fw: acmp

From: "Andrew deValpine" <bbcrsant@nushtel.com>

Date: Fri, 5 Aug 2005 13:32:45 -0800

To: <helen.bass@noaa.gov>

---- Original Message -----From: Andrew deValpine To: helen.bass@ocrm.gov

Sent: Friday, August 05, 2005 12:50 PM

Subject: acmp

Helen:

Attached are the comments of the Bristol Bay CRSA regarding the scoping for the proposed amendment to the Alaska Coastal Management Program.

Andrew deValpine Dillingham, AK

bbcrsa cmmnts.doc

Content-Type:

application/msword

Content-Encoding: base64

Mr. John R. King, Responsible Program Officer Coastal programs Division Office of Coastal Resource Management National Ocean Service SSMC4, Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

August 5, 2005

Mr. King:

The Bristol Bay CRSA, based in Dillingham, AK, has 492 miles of coastline and anadramous fish streams reaching hundreds of miles inland. One watershed in the eastern part of our district is larger than Vermont. The Togiak National Wildlife Refuge, which lies in the western part of our district, is larger than Connecticut and Rhode Island combined. The Wood-Tikchik State Park, lying between these two, contains 1.6 million acres that includes important salmon-rearing habitat, to name just one important habitat in the park.

These watersheds support economically valuable commercial and sport fisheries, as well as spiritually valuable subsistence fisheries. Moose and caribou use these same watersheds, as well as migratory waterfowl and songbirds. Offshore are rich feeding grounds for Beluga and Gray whales as well as for sea lions, walrus, and seals.

The bill that set all these changes to the Alaska Coastal Management Program in motion, HB 191, states at the beginning:

(1) the Alaska coastal management program (ACMP) is intended to function with a minimum of delay and avoid regulatory confusion, costly litigation, and uncertainty regarding the feasibility of new investment; (2) there is a need to update and reform the existing statewide standards of the ACMP so that they are clear and concise and provide needed predictability as to the applicability, scope, and timing of the consistency review process under the program; (3) there is a need to update and reform the district coastal management plans under the ACMP so that the local enforceable policies within those plans are clear and concise, provide greater uniformity in coastal management throughout the state, relate to matters of local concern, and do not duplicate state and federal requirements;

Any scoping of the potential affects brought about by the changes to the ACMP should begin with an assessment of those claims – if they are invalid, for example, then that would frame how the affects of the proposed amendment are assessed. The same holds if they are valid claims. An Environmental Impact Statement (EIS) analysis of the proposed ACMP amendment should take as its starting point these words by ground-truthing these claims and assertions.. We should see data on how the ACMP worked or did not work in order to evaluate how the amended program will or will not work better. To that end, the EIS should

- · Document claims that ACMP held up any projects through regulatory confusion
  - Document litigation that arose from the ACMP;
  - o Document delays;
  - Of those projects the ACMP did hold up, show why or how those projects were held up, and then show how the new program would have changed the picture and, thus, how it would affect the human environment;
  - o Give percentages of projects held up.
- Assess these issues raised in HB 191: predictability and confusion. Is the amended
  program less confusing and, hence, more predictable? As part of this, a flow-chart
  delineating the old consistency review process next to the new could be instructive.
- If the amended program proves to be more predictable, what does this mean for the developed environment? Is it possible to provide predictability and uniformity while at the same time relating to matters of local concern?

The net effect of the changes to the ACMP is a centralization of decision-making in the state agencies and, in particular, the Department of Natural Resources and the Department of Environmental Conservation. An EIS should assess the affects of a centralized v. a decentralized program: How does a reduced local role affect the human environment locally, where the effects of a project will be felt? An EIS could take an existing project that went through the ACMP process and was modified during that process through local policies and compare what would happen under the new ACMP.

New measures set in motion by HB 191 will reduce the ability of coastal districts to manage coastal resources and uses. New requirements for "prescriptive" policies will eliminate the current process where districts negotiate with an applicant to find project-specific solutions to issues that are tailored to the specific proposal and area of the development. An EIS should explore the ramifications of this rigidity on the human environment.

The elimination of Coastal Policy Council (CPC) removes districts from the coastal decision-making process -- districts had the majority of votes on the CPC. The June 2 description of the ACMP states that districts will no longer have representation on the ACMP Working Group. Some specific standards, such as recreation and subsistence, only have substance through the local coastal district programs since there are no implementing authorities within the state. It is necessary for local coastal district programs to designate these areas to be able to subsequently develop policies that would apply within the designated boundaries. Designating these areas and writing acceptable policies for them thus far has been problematic.

Regarding subsistence, which, as stated, is spiritually as well as economically important to the people of this region, there have been several changes that have weakened this standard. Provisions to assure access to subsistence resources have been removed. District policies can only be established for areas designated for subsistence use. Policies may only address the use and not the resource itself.

It remains to be seen what evidence DNR will require for establishing a subsistence use area Subsistence use for some resources, namely caribou, can change from year-to-year because

of changes in migration patterns. Comments on draft plans by DNR state that the "avoid or minimize" clause in the standard adequately addresses most issues and that districts could only "allow or disallow" a use. The standard does not include a mitigation clause even though many development projects will have adverse impacts where mitigation would be appropriate. Further, as a CRSA, which is a political subdivision of the state but not a municipality with Title 29 planning powers, whether we can lawfully allow and disallow uses is a question yet to be decided by the state's attorney general. Given the essential and fundamental importance of subsistence to rural Alaska, where the vast majority of the state's coastal zone lies, an EIS should thoroughly explore and assess the affects of changes to the subsistence standard and how it is to be applied and developed. These changes also raise the question of environmental justice, in this case whether the affects of industrial developments will fall disproportionately on Native people in rural Alaska.

A change in the habitats standard removes upland habitats as a special category in the standard. Conceivably, what happens in the uplands can profoundly affect the coastal zone as currently defined. An EIS should explore whether this omission could have significant negative effects to the human environment.

Districts may only establish policies for areas they designate as important habitat. Returns on the first round of plan revisions suggest designating important habitat will not be easy, if it is possible at all. This would leave state law to protect important habitats, but state law may be inadequate to protect habitats. An EIS should compare regulatory authorities of the Office of Habitat Management and Permitting (OHMP) and the heft that was added by local policies and state standards pre-HB 191 with what OHMP will be able to do with the new program. An EIS should analyze the limitations of habitat areas, as laid out in the regulations. An EIS should also analyze 11 AAC 12.300 (c)1(B)(ii), where important habitat is described as habitat "(ii) that is shown by written scientific evidence to be significantly more productive than adjacent habitat."

The proposed amendment to the ACMP describes sweeping changes to the program. As such, it deserves a thorough airing and analysis. Thank you for this opportunity to comment.

Andrew deValpine Director, Bristol Bay CRSA Subject: ACMP Scoping Comments

From: "Bob Shavelson" <br/> <br/> bob@inletkeeper.org>

Date: Fri, 5 Aug 2005 15:13:35 -0800

To: <john.king@noaa.gov>

 $\textbf{CC: "Bill Millhouser"} \\ < \textbf{Bill.Millhouser@noaa.gov}, \\ < \textbf{Helen.bass@noaa.gov}, \\ \textit{"Eldon Hout"} \\ < \textbf{Eldon.Hout@noaa.gov} \\ > \textbf{Millhouser."} \\ < \textbf{Millhouser.} \\ = \textbf{Millho$ 

Hi John -

Attached please find scoping comments from Cook Inlet Keeper, Alaska Center for the Environment and the Southeast Alaska Conservation Council on the ACMP DEIS.

Thanks and let me know if questions.

Bob Shavelson Cook Inlet Keeper P.O. Box 3269 Homer, AK 99603 p.907.235.4068 ext 22 f. 907.235.4069 c.907.299.3277 bob@inletkeeper.org www.inletkeeper.org

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# ALASKA CENTER FOR THE ENVIRONMENT SOUTHEAST ALASKA CONSERVATION COUNCIL COOK INLET KEEPER

VIA EMAIL ONLY (john.king@noaa.gov)

August 5, 2005

John King, Program Manager
Office of Coastal Resource Management/Coastal Program Division
NOAA/National Ocean Service, SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

#### I. INTRODUCTION

Cook Inlet Keeper, the Alaska Center for the Environment and the Southeast Alaska Conservation Council ("commentors") are community-based nonprofit organizations dedicated to, among other things, protecting coastal resources and communities in Alaska. Commentors' members rely on healthy coastal resources for their livelihoods and their quality of life. Please accept these comments on behalf of commentors and their over 10,000 Alaskan members on the Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA) for the revised Alaska Coastal Management Program (ACMP).

As a threshold matter, commentors note the remarkably short time frame dedicated to drafting the DEIS specifically, and the dearth of public involvement associated with the ACMP revision process generally. The State of Alaska has made few efforts to meaningfully engage the general public in the substantial ACMP changes proposed, and has made virtually no effort to consult with federally-recognized Native Tribes. Instead, the Governor's office and supporting agencies have bulldozed through concerns about sustainable fisheries, dismissed the repeal of local controls, and thumbed their noses at reasonable attempts to negotiate a workable ACMP. The atmosphere created by the State's heavy handed tactics has left coastal communities distrustful and suspicious, and cast a burden on OCRM to ensure the DEIS reflects local voices and concerns.

The importance of the ACMP's EIS cannot be understated: the last EIS for the ACMP endured for 25 years, and the pending analysis will help shape coastal management decisions for years to come. As a result, it is critical OCRM analyze the full range of alternatives available, including a no action alternative, and thoroughly understand the reasonably foreseeable individual and cumulative effects that may flow from the

proposed ACMP changes. Additionally, the DEIS should discuss how the proposed revisions with the ACMP will comport with the findings required for program approval under the federal CZMA.

#### II. COMMENTS

#### A. Effects of Reduced Local Control & Participation

Some of the most draconian changes to the ACMP revolve around the virtual elimination of meaningful local control and input in coastal project reviews, including the removal of meaningful local enforceable policies. OCRM must analyze the full range of impacts and implications stemming from this loss of local control and input, including but not limited to:

- Proposed ACMP changes embrace "prescriptive" policies that will eliminate the
  current process where local districts negotiate with an applicant to find projectspecific solutions to issues of concern, and where such solutions are tailored to the
  specific proposal and the area of the development. The DEIS must analyze how the
  application of such prescriptive policies will diminish and/or enhance coastal
  resource protection.
- Local ACMP participation historically has provided incentives for local communities and governments to carefully oversee development projects in their jurisdictions. The DEIS must analyze the effects the proposed changes to local participation will have on coastal resource protection and management. For example, where will coastal impacts from industrial development increase or decrease
- The effects stemming from the elimination of the Coastal Policy Council (CPC), where districts once had a meaningful say in the coastal decision-making process, and the state's recent efforts to cut district representation from the ACMP Working Group.
- The effects of the proposed changes on opportunities for public comments and participation in coastal management decisions.
- The effects on coastal resources and communities in areas where coastal districts drop out of the program and/or do not revise their coastal management plans.
- The DEIS must analyze the effects if/when local communities develop their own local zoning or other rules or ordinances outside of the ACMP process, and how such piecemeal regulation across the state will affect the timing and effectiveness of permitting decisions and coastal resource protection. This analysis should also address the extent to which local governments can address matters formerly addressed by enforceable policies, under their Title 29 powers (including but not limited to how local governments can manage coastal resource impacts stemming from development projects on federal lands and in Outer Continental Shelf waters?).

This analysis must also include impacts and effects in Coastal Resource Service Areas (CRSAs) where there is no regional planning or zoning authority.

- Evaluate specifically the gaps that will be left from the elimination of local enforceable policies for protection of coastal resources and uses.
- Provide a comprehensible analysis on how the concepts discussed in the State's
  June 2, 2005, submittal to OCRM will limit affect district policies (e.g., how will the
  concepts of "flow from," "adequately addressed," "DEC carve out," "stringent versus
  specific," and "avoid, minimize and mitigate" affect coastal resources and uses, and
  public participation?).
- Analyze the State's comments on the Public Hearing Drafts of revised coastal district plans, and determine the types of policies that would/would not be permissible under the State's new restrictions

#### B. Statewide Standards & Definitions

In its efforts to remove most substantive coastal protections from the ACMP, the State not only eliminated localities from effective participation and control, but also gutted the statewide standards designed to promote uniform rules and predictability throughout the coastal zone. Among other things, the DEIS must evaluate:

- How changes to statewide standards and other changes will affect permitting timelines and coastal protections for specific industry sectors;
- How changes to statewide standards and related changes will improve or decrease coastal protections for specific resources and uses, and if coastal protections will be weakened, how and to what extent will they be weakened, and what state laws exist to attempt to fill this management void.
- Aside from the effects from the changes to statewide standards generally, some of the most serious rollbacks have occurred in the mining, habitat, subsistence and energy facility standards. Accordingly, the DEIS should carefully analyze the effects of changes to these standards, and their effects on coastal resources and uses, and public participation.
- The DEIS must evaluate the changes to ACMP definitions and their effects on coastal resources protections and uses.

#### C. Consistency Review Process

The State's proposed changes will virtually eliminate meaningful participation by coastal districts and local citizens in the consistency review process. As a result, all changes to the ACMP consistency review process, and their effects on coastal resources and uses and public participation, must be evaluated, including but not limited to:

- The effects of limiting reviews to activities occurring within the coastal zone, and how
  projects outside the coastal zone that affect coastal resources will affect permitting
  timelines, coastal resources and uses and public participation. This analysis should
  clarify state and local roles and responsibilities for projects outside the coastal zone
  that may affect coastal resources and uses.
- The effects from legislative mandates to enhance the list of projects receiving cursory, site-specific reviews (i.e. enlarging the A and B lists)
- The effects of the legislative elimination of coal bed methane projects from consistency reviews.
- How the new 90-day limit for consistency reviews will affect protections for coastal resources and uses, and public participation.

#### D. Air and Water Quality Issues

Perhaps the greatest fallacy foisted upon Alaskans by the State in this process has been that "carving out" air and water quality protections from the consistency review process will result in adequate coastal protections. The responsible state agency, ADEC, remains understaffed, under funded and too vulnerable to political pressures to fill the void left by the removal of local enforceable polices and meaningful district coastal plans. Accordingly, the DEIS must include a thorough analysis of the effects of removing matters regulated by the DEC from the consistency review process, including but not limited to:

- What air and water quality matters NOT regulated by ADEC exist, and can coastal districts exert any influence over such issue areas.
- Evaluate the scope of review for projects that require both a ADEC permit and federal agency permits (e.g., a DEC 401 certification and either an EPA NPDES permit or a Army Corps of Engineers 404 permit).
- Explain the process for districts to participate in consistency comments for air and water quality aspects of Outer Continental Shelf (OCS) projects in light of the fact ADEC has no authority in federal waters.
- Analyze the effects on ADEC staffing and resources needed to meet current and reasonably foreseeable permit issuance work loads.

#### E. Environmental Justice & Government-to-Government Consultation

The State's proposed changes will disproportionately impact Native Alaskans and others who rely heavily on subsistence resources. As discussed, the State has made

an anemic effort to include Tribal communities in ACMP revision discussions. As a result, the EIS must, among other things, include:

- Evaluation of Native Alaskan consultation procedures to understand and address impacts to subsistence resources as required by federal Executive Orders 12898 & 13175, and in the NOAA Administrative Order Series 216-6.
- A review of state mechanisms to engage Native Tribes in meaningful consultations over state permitting and related decisions.
- The effects on Alaska Native cultures, communities, lifeways, resources and economies from the proposed ACMP changes, including but not limited to how changes in the statewide subsistence standard will affect Tribal resources and uses.
- Effects to Native Tribes, uses and resources from OCS developments.

#### F. Offshore (OCS) Projects

The state has no authority outside of the CZMA to regulate projects on the OCS, yet activities such as offshore oil and gas, methane hydrate development and fish farming pose legitimate risks to local coastal resources. As a result, OCRM must analyze the following:

- Effects on coastal resources and uses from air and water quality impacts flowing from activities on the OCS.
- Effects on district and public participation in ADEC's consistency review process for OCS projects.
- How the proposed ACMP changes improve/decrease the State's ability to protect and manage coastal resources from OCS activities.

#### G. Public Participation

The Murkowski Administration has taken special efforts in the ACMP revision process and elsewhere to quash citizen participation and input in decisions affecting public trust resources. Because the CZMA envisions a participatory framework involving a diverse array of stakeholders, the DEIS must evaluate:

- Effects of eliminating projects from ACMP reviews (i.e. enlarging the A or B lists, and removing coal bed methane projects from review)
- Effects of removing public challenges for ACMP consistency determinations.
- How reduced or eliminated public notice will affect public participation and coastal resource protection.

 Effects of interest group participation and influence over the ACMP and the ACMP revision process (i.e. extractive industries have had a front row seat in all substantive ACMP deliberations, while citizens, including Tribes, have either been precluded from such discussions or discouraged from participating).

#### III. Conclusion

It has been a long and painful process to watch Governor Murkowski unravel a once successful coastal management program. The ACMP revision process has become a metaphor for a management ideology that embraces corporate interests and rapid development over Alaskan interests and sustainable coastal resource management. As a result, OCRM has an opportunity – and a duty – to fully weigh the broad range of impacts and effects from the sweeping changes to the ACMP, including all reasonably foreseeable social, cultural, ecological and economic effects.

Thank you for the opportunity to comment, and please feel free to contact Bob Shavelson with any questions or comments at: Cook Inlet Keeper, P.O. Box 3269, Homer, AK 99603; ph: 907.235.4068 ext 22; bob@inletkeeper.org.

Very truly yours,

Bob Shavelson Cook Inlet Keeper

Submitted on behalf of:

Randy Virgin Alaska Center for the Environment

Buck Lindekugel Southeast Alaska Conservation Council

Cc: Alaska Coastal District Association



## Representative Beth Kerttula

#### Alaska State Legislature District 3

August 4, 2005



John King
Program Manager
Coastal Program Division OCRM
National Ocean Service
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Re: ACMP EIS Scoping

Dear Mr. King:

I am writing with several problems I think should be addressed in the EIS concerning the proposed changes to the Alaska Coastal Zone Management Program.

Modifications to the statewide standards have the potential to weaken protections for subsistence resources and habitats. Provisions to assure access to subsistence resources have been removed and districts may only establish policies for areas they designate as important habitat.

These losses of local control reduce the ability of the coastal districts to manage coastal resources and uses. The people who manage Alaska's coastal districts know better than anyone how to balance development and protection of coastal resources and they should be allowed to continue to make these important decisions.

The City and Borough of Juneau will lose the Juneau Wetlands Management Plan (JWMP) which has been in place since 1992 and has minimized impact on high value wetland and promoted development on low value wetlands through an expedited process. Juneau will also lose other important policies on issues such as streamside setbacks, coastal development and seafood processing.

John King August 4, 2005 Page Two

Changes to statewide standards and limitation of the district's enforceable policies will have significant effects on the coastal areas of Alaska. While some of the changes on their own may appear minimal, taken together they could have a significant effect on the future of Alaska's coastal communities.

Thank you for taking into consideration my comments and those of Alaskans who are working hard to retain our ability to effectively manage development in our coastal regions.

Sincerely,

Representative Beth Kerttula

## North Slope Borough

#### OFFICE OF THE MAYOR

P.O. Box 69 Barrow, Alaska 99723 Phone: 907 852-2611 or 0200

Fax: 907 852-0337

George N. Ahmaogak, Sr., Mayor

SLOPE BOROTTO

August 5, 2005

Mr. John R. King, Responsible Program Officer Coastal Programs Division Office of Ocean and Coastal Resource Management National Ocean Service SSMC4, Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Sent Via E-Mail: John.King@noaa.gov

Re: Environmental Impact Statement (EIS) for the Proposed Approval of Amendments to the Alaska Coastal Management Program (ACMP)

Dear Mr. King:

Thank you for this opportunity to provide written scooping comments on your Office of Ocean and Coastal Resource Management's (OCRM's) intent to prepare an environmental impact statement (EIS) for the proposed approval of amendments to the Alaska Coastal Management Program (ACMP). These comments will be in addition to testimony that I and members of my North Slope Borough staff provided at both Barrow and Anchorage scoping meetings.

I must first state what I am sure you realize all too well; that the timeline OCRM has established for completion of this EIS process is unreasonably brief. That you expect to publish a Draft EIS for public review only three weeks after the conclusion of scoping begs the question whether you can give appropriate consideration to the comments that

the Borough and others are now submitting. It is our position that you must produce a legally defensible product that complies with the letter and the spirit of the National Environmental Policy Act (NEPA) and its enabling regulations regardless of whether the task can be completed within the clearly insufficient time dictated by the misguided statements and actions of our present state administration and Legislature.

This EIS process is all about impacts. First, whether additional impacts to the physical, biological, or human environments will occur as a result of the State's proposed amendment of the ACMP, and Second, what and how significant those impacts will be.

The answer to the first question is **Yes** – of course there will be additional environmental impacts resulting from the amendment of the ACMP. That essentially is the result *intended* by the administration when it began this process. It was intended that the changes to the program would allow for more development within and adjacent to the state's coastal zone, and that the development would occur faster, with fewer regulatory hurdles to overcome, and with a drastically reduced ability of local communities to reject or shape it.

There is no such thing as impact-free development. The state wants more development in the coastal zone, and has amended the ACMP to allow that to happen. There will be more impacts to the resources and competing uses of the coastal zone because of the amendment.

Will these additional impacts be significant and harmful? Yes, they will be. They will certainly be above and beyond the level that local districts and the communities we represent want and think is appropriate. I know that because despite the rhetoric and unsupported claims of a program out of control, the old ACMP was working. In most if not all coastal areas, including the North Slope, the old ACMP was a critical tool in approaching an appropriate, if delicate, balance between industrial development and competing uses and values. That is not to say that irreversible industrial impacts have not already occurred in some regions. This EIS must incorporate the findings of the 2003 National Research Commission report on the cumulative effects of oil and gas activities on the North Slope. Among other findings, the researchers found that piecemeal development and permitting had resulted in significant social and cultural impacts to our largely Inupiat population, and comprehensive planning and regulatory structures should be strengthened to prevent further effects. The wholesale changes embodied in the proposed ACMP amendment, however, take the program in the opposite direction. They will, and I stress once again, are intended to upset whatever semblance of balance we now have to achieve a permitting system that will favor development.

The North Slope Borough has been a very active participant in coastal management since the 1970s. Our own local district program was finally approved and adopted as part of the ACMP in 1988. For a quarter century, the ACMP has provided the North Slope Borough an important tool to manage coastal uses and resources, especially offshore resources. The people of the North Slope have depended on coastal resources

to sustain our traditional Inupiat Eskimo culture for thousands of years. The subsistence harvest of fish, waterfowl, caribou, bowhead whales, and other marine and terrestrial mammals sustains our bodies and our spirits. Subsistence activities define who we are. The proposed constriction of our ability to manage these resources is both an insult and an injustice. I am deeply concerned about the extent of the proposed changes and the process that was used to develop the revised regulations. Despite repeated assertions by the state to the contrary, the lack of opportunities for Alaska's coastal communities to be meaningfully involved in the drafting of the regulations was truly disgraceful. The comprehensive overhaul of the ACMP reduces significant protections embodied in the former program. The regulations would exceed what was discussed by the administration during legislative hearings as well as what was approved by the Legislature in HB 191. The regulations would change coastal zone boundary criteria, weaken the statewide standards, narrow the geographic coverage of the ACMP, and greatly limit the ability of coastal districts to develop enforceable policies. It can be expected to have significant adverse impacts to subsistence, fish and wildlife, their habitats, and other coastal resources and uses, and by extension therefore, to our centuries-old Inupiat culture and current social systems.

A number of new provisions in the ACMP would reduce the ability of the North Slope Borough and other coastal districts in Alaska to manage our coastal resources and uses. Alaska's original coastal program established a strong local voice in coastal management, but the proposed changes would diminish this role by eliminating provisions for local control.

Perhaps the change with the most important consequences is the establishment of new restrictions on coastal district enforceable policies. The Alaska Department of Natural Resources (DNR) has gone to great lengths through the crafting of multi-layered regulations and ever-changing interpretations of those regulations that often strain common English usage and common sense to remove the ability of coastal districts to establish meaningful policies. The State's June 2, 2005 submittal to OCRM describes a complex set of restrictions on the drafting of policies that is extraordinarily difficult to decipher. These restrictions are couched in vague terminology using terms such as 'flow from', 'adequately address', 'avoid, minimize or minimize', 'carve outs', and 'stringent versus specific'. Though these concepts are not described in plain language, the message is clear to coastal districts that they may no longer establish meaningful enforceable policies addressing the very issues that spurred most of us to be involved in the program to begin with.

The implications of these new restrictions on enforceable policies cannot be fully understood just by reading DNR's June 2 document. To provide for the reviewing public the best indication of the State's intent regarding the role and functions of local districts under the amended ACMP, the EIS must include an analysis of the State's responses to the draft revised plans of the North Slope Borough and the other coastal districts. These responses leave little doubt that under the new ACMP, there is no room for effective district policies. Without district policies, coastal resources and uses will receive new pressures and adverse impacts that should be comprehensively addressed in the EIS.

The sweeping changes will seriously affect the state's ability to meet the objectives of the ACMP outlined in AS 46.40.020 and national policy objectives identified in Section 303 of the federal Coastal Zone Management Act. In addition, the weakened role of the coastal districts conflicts with the explicitly stated purpose of Article 10 of the Alaska Constitution to provide for maximum local self-government.

The Borough recognizes the need for economic development. We are as dependent as the state on North Slope oil and gas development to generate revenues necessary to provide essential services for our residents. The ACMP has provided the Borough with a singular formal status, a "seat at the table" where we would not have had one otherwise, during federal and state decision making for certain projects that could affect critically important coastal resources and uses. Assuring the protection of subsistence resources and uses has been the primary goal of our participation in the ACMP. The proposed statutory and regulation changes, however, will remove our ability to participate effectively in future ACMP consistency reviews. The State has asked us to be a visible partner is seeking expanded North Slope oil and gas leasing, exploration, and development. Now though, the Administration is telling us with these ACMP changes, that we cannot be trusted to meaningfully participate in the management of that development when it is our communities that will feel its impacts.

#### **PROCESS ISSUES**

We have a number of concerns about the process that has produced this proposed amendment. First, Section 306(d) of the federal Coastal Zone Management Act requires that states develop a coastal management program with the opportunity for full participation by individuals and organizations, including local governments. The changes to the program, especially the regulation changes, did not provide adequate opportunities for meaningful participation by the general public or by the coastal districts. Although the DNR established a work group during development of the initial regulation changes, this work group never had any meaningful discussions about the content of the regulatory changes. Many of the meetings were either cancelled or involved brief updates by DNR about the status of the regulations. An additional process issue resulted from a lack of adequate explanation of DNR's interpretation of regulations before or during the three revisions. In short, with respect to significant issues, neither the districts nor the public were given clear explanations of the meaning and impacts of the changing regulations.

Another concern relates to the timing of the May 20, 2005 required public hearing. The hearing preceded the June 2 submittal of a complete amendment request to OCRM. New regulations were out for review at the time of the hearing. The coastal districts and the public did not have complete information on which to base their testimony and written comments.

As I mentioned in a letter to Governor Murkowski before the hearing, limiting testimony only to communities with legislative information offices (LIOs) placed rural coastal residents at a significant disadvantage, and effectively froze many of them out of the review process. We believe that environmental justice issues are raised by this exclusion of largely Native and rural coastal residents from the single required hearing that was conducted by the state. The cultural traditions of Native Alaskans favor oral testimony rather than submission of written comments. The choice to limit testimony to the more populated communities discriminated against rural Alaskans who might have testified if the hearing was open to all coastal Alaskans. In addition, limiting the hearing to LIOs prevented great numbers of coastal residents and community and tribal officials in communities without those facilities from listening in on these important proceedings. Many would certainly have liked to use the opportunity to educate themselves and consider other testimony in considering whether to submit written comments.

The continually changing policy direction by DNR regarding what district enforceable policies will ultimately be acceptable has been confusing, difficult to track, and continues to this day. For example, during testimony on HB 191 in 2003, the DNR provided the Legislature with a number of policies that would be acceptable. These policies were posted, but then removed from the ACMP website without explanation. Despite repeated district requests that the agency do so, DNR has never explained whether these policies are still approvable, or if not, why not. Another example relates to a May 3, 2004 response to comments on the initial ACMP regulation changes. In that letter, DNR stated that it was not appropriate for the state to establish a statewide subsistence priority, but that "[d]istricts have the right and responsibility to establish enforceable policies, including designation of a subsistence priority, as long as that policy is a matter of local concern' . . ." In its recent comments on the public review draft of the Borough's coastal management plan, however, DNR has rejected each of our proposed subsistence policies, including a policy that established a priority for subsistence uses. This continually changing policy guidance raises significant process issues.

#### **EFFECTS TO SUBSISTENCE**

The residents of the North Slope Borough have always been closely tied to the land and water. As we have for millennia, the Inupiat today depend on fish, wildlife and plants to provide food for our tables as well as spiritual sustenance. The ACMP has been an important management tool for the Borough in ensuring that there is a proper balance between resource development and protection of subsistence resources and uses. We have never used our local plan as an impediment to responsible development, and have no intention or incentive to do so. DNR's interpretation of the new ACMP regulations, however, appears to block coastal districts from developing meaningful policies for subsistence uses and resources. Removing that local voice on an issue so central to the welfare of North Slope residents threatens to radically disrupt the delicate balance that allows us both economic and cultural prosperity. According to DNR's comments on our draft plan revision, districts may only establish policies for subsistence that "allow or disallow" a use, and those policies may not address subsistence access, level of need,

or a subsistence use priority. This interpretation is not consistent with testimony given by DNR to the Legislature, with the May 3, 2004 DNR response to comments on the initial regulation changes, or with HB 191 itself.

The North Slope Borough is extremely concerned about effects to subsistence from changes to the statewide Subsistence standard. The standard has been rewritten to only apply to areas designated as important for subsistence use. DNR claims that district policies cannot establish policies because the standard uses the terms "avoid or minimize." The net result of the weakened standard and new restrictions to enforceable policies will significantly affect subsistence and subsistence resources. We find the description of the Subsistence standard in the June 2 description of the ACMP offensive. This description says that the Subsistence standard does not include a provision for mitigation because a project would never be allowed if it would have effects that would need to be mitigated. This assertion is disingenuous because clearly development projects will have impacts to subsistence that merit mitigation.

We believe that DNR has crafted regulations that go beyond the legislative intent and mandate of HB 191, as evidenced by the final version and the many changes made to the bill as it worked its way through legislative committees. We believe that DNR has since been misinterpreting the regulations in finding that the statewide standard adequately addresses subsistence use protection and that matters, such as access, level of need, and subsistence use priorities do not "flow from" the statewide standard. The statewide standard is very general, and it does not appear difficult to demonstrate that it fails to adequately and comprehensively address subsistence uses and resources. Without the ability to establish locally crafted and implemented district policies, subsistence uses and resources will undoubtedly suffer significant adverse effects from future development beyond those permitted in the past. The history of our implementation of the North Slope Borough Coastal Management Plan, and that of other districts implementing their local plans, has amply demonstrated that in the vast majority of cases, local involvement has enhanced final project design and operation, reduced environmental impacts, and fostered, rather than impeded, responsible development.

The EIS must also consider the potential effect of the amendment on bowhead whale management and the subsistence harvest of the animal. Any perceived threat to the bowhead whale associated with the potential for increased industrialization of the species' habitat may elicit action by the International Whaling Commission (IWC). The IWC has no authority to restrict industrial operations, and could see a reduction in the subsistence quota as the only means of providing enhanced protection to a whale population at increasing risk. Finally, the new identification of a significant spill risk may itself have effects. The loss of the bowhead whale subsistence harvest and associated activities for even a short time would severely impact the cultural, spiritual, social, nutritional, and economic well-being of the Inupiat and Yupik Eskimo people residing in the coastal Beaufort, Chukchi, and Bering Sea communities of Alaska.

#### **MEANINGFUL DISTRICT POLICIES**

Comments by DNR on the Borough public review draft of our revised coastal management plan reveal the agency's extreme and restrictive interpretation of HB 191 and the revised ACMP regulations. The interpretation of the regulations introduces new concepts that when combined with HB 191 will eliminate the possibility for districts to establish any meaningful enforceable policies.

To craft a local policy, HB 191 requires only that districts demonstrate that state or federal law does not adequately address a matter of local concern. DNR has interpreted its regulations to mean further that local enforceable policies must "flow from" a statewide standard, or in other words, a policy may only address specific issues that are included in a statewide standard. By doing so, however, a district policy would have to address a matter already included in the statewide standard, which apparently is something prohibited by the statute. These two requirements together appear to all but eliminate the ability of a district to establish policies.

The "flow from" concept has additional problems. According to DNR, a district must limit its habitat policies to areas designated as important habitat, and the policies may only address the management goals listed in the statewide habitats policy for each type of habitat. Since most of the management goals only address nonliving subjects, a district would not be able to establish a policy for the fish and wildlife that use the habitat. For example, the statewide standard only lists nutrients and water flow as a management goal for wetlands, and therefore a district could not develop a policy for waterfowl or fish that use the wetlands.

Another interpretation of the regulations by DNR would severely limit a district from establishing an enforceable policy for any statewide standard that uses the words "avoid or minimize" impacts. According to DNR, a district could only "allow or disallow" a use for standards that use the term "avoid or minimize" including the subsistence, utility routes and facilities, transportation routes and facilities, and habitats standards.

The removal of matters regulated by the Alaska Department of Environmental Conservation (DEC) from ACMP consistency reviews further limits the ability of coastal districts to address impacts to coastal uses and resources. Air and water quality is directly related to habitats and subsistence resources and uses. Under the new statute and regulations as interpreted by DNR, it will be impossible for a district to develop policies to protect coastal resources and uses from an oil spill. This is an especially important consideration for the North Slope Borough. It has to varying degrees been acknowledged by the state and federal governments, and by the oil industry itself, that the capability to effectively respond to a significant oil spill under the broken ice conditions that occur for prolonged periods in arctic waters is minimal at best. To not allow us to craft local policies dealing with the potential for oil spills in arctic waters, and particularly in federal waters arguably beyond the reach of our municipal planning and zoning authority, is a challenge to our right and ability to manage activities that most directly threaten our subsistence whaling culture.

During testimony on HB 191 and in response to direct questions on the subject, DNR repeatedly assured the state Legislature, districts, and the public that districts would have ample opportunities to develop enforceable policies. With the revised regulations and each subsequent interpretation of them, however, DNR has laid down additional restrictions on the ability of districts to craft enforceable policies. The effect is to remove the ability of coastal districts, and the more than 200 communities and two-thirds of state residents they represent, to participate meaningfully in ACMP consistency reviews. Past experience has demonstrated that the state only provides due deference to districts in ACMP reviews when a local policy clearly justifies the imposition of a mitigation measure. Without policies, there will be no incentive for the state or federal agencies to involve coastal districts in the consistency review process in a meaningful way.

The ultimate result of limiting district policies will be increased impacts to coastal resources and uses. Alaska has not established the level of protection afforded by broad and long-established environmental laws in other coastal states. The state has not had to develop similar environmental laws, in part, because the ACMP has served to provide a balance between development and protection of resources and uses. The new ACMP will no longer provide adequate protection of coastal resources and uses. For each change to the ACMP that reduces protections for coastal resources, the EIS should include a discussion of how other laws will make up for this loss.

#### OTHER WEAKENED STANDARDS AND LAWS

In addition to reduced opportunities to establish district enforceable policies, the changes to the ACMP include other provisions that will result in added impacts to coastal uses and resources. Changes to the ACMP regulations weaken provisions in many of the former statewide standards, including the subsistence standard and the habitats standard. The proposed subsistence standard removes priority language that required state agencies and districts to assure opportunities for subsistence.

Changes to the Habitats standard are equally troubling. Since the mid-1980s, the Habitats standard has brought applicants, state and federal agencies, and coastal districts together to develop mitigation measures to reduce impacts. Several changes to this standard will have serious ramifications. First, the new standard has removed most references to biological resources, and DNR has said that only matters specifically spelled out in the standard may be considered. In other words, for most types of habitats, only non-biological matters may be considered. This makes no sense. Second, districts may only establish enforceable policies for areas designated as important habitat. The regulations impose strict parameters for establishment of these areas, and there must be a direct connection between effects of activities on saltwater areas. As a result, upland habitats in the coastal zone will no longer receive adequate protection. Third, the new standard removes the three-part sequencing process for approving projects that do not maintain or enhance habitats. The ability of the state to

address habitat issues through other agencies should be evaluated in the EIS, especially in light of the fact that the Office of Habitat Management and Permitting has only limited authority provided by two very narrow statutes.

Each of the changes to the other statewide standards should be carefully evaluated to determine the effects to coastal uses and resources. For example, the statewide Mining standard has been eliminated, and changes have been made to the transportation and utilities standards. The statewide minerals standard has been replaced by a standard that only applies to sand and gravel extraction from saltwater. In addition, the effect of the "avoid, minimize and mitigate" sequencing process in 11 AAC 112.900 should be carefully analyzed in the EIS to determine if it would adequately protect coastal resources and uses. From what can be inferred from the description in the June 2<sup>nd</sup> description of the ACMP, the sequencing process would not be effective because mitigation would seldom, if ever, be required.

The removal of matters regulated by the Department of Environmental Conservation from the consistency review process can be expected to have detrimental effects to the resources and uses of Alaska's coastal zone. While in theory air and water quality issues can be separated from other coastal management issues, in reality they cannot be effectively separated. Air and water quality is inextricably connected to subsistence, fish and wildlife and their habitats and every use or resource of the coastal zone. As Inupiat people, we recognize these connections, and are puzzled by the attempt to categorize and separate air and water quality impacts from other development impacts.

Projects with both a federal permit and a DEC 401 certification present special problems. It is not clear in recent project descriptions just what the scope of review is for the consistency review for such projects. Without a clear understanding of which activities are being reviewed, the consistency review loses its effectiveness.

The current interpretation by the state of the statutory changes to the ACMP would remove all air and water quality issues from the consistency review process. This interpretation will result in adverse effects to the environment, because there are many air and water quality matters not regulated by DEC, including activities in the Outer Continental Shelf discussed next.

The EIS should analyze a variety of projects recently reviewed by DNR to determine what aspects of air or water quality are no longer being addressed, especially in respect to the elimination of district enforceable policies for these matters.

Two other changes to the ACMP will result in additional coastal impacts. First, HB 69, passed in 2003, removes coal bed methane projects from ACMP reviews without a discussion of the potentially significant environmental effects of these activities. Experience in other states has demonstrated that significant coastal effects can occur from coal bed methane projects. Second, AS 46.40.096 directs DNR to expand the list of categorically consistent and generally consistent activities (the A and B lists) to "be as broad as possible so as to minimize the number of projects that must undergo a

consistency review . . ." This provision does not mention project effects or that such lists should be limited to routine projects.

#### **OCS REVIEWS**

The ability to influence federal Outer Continental Shelf (OCS) activities is of great concern to the North Slope Borough. In fact, a major reason for development of the ACMP was to provide the state and coastal districts an avenue to influence projects on the OCS. There is great uncertainty concerning how reviews of projects in federal waters will be conducted under the proposed changes to the ACMP. The ability of local districts to participate in discussions about consistency for activities that could affect air and water quality is unclear. An offshore oil spill is the single most feared industrial threat to our Inupiat way of life, and changes to the ACMP will strip away our most important mechanism for working with project applicants in addressing potential impacts to offshore subsistence resources and uses. The strongly consultative system was working, but is now being dismantled.

As a result of DNR's interpretation of the DEC carve out, there would be no opportunity for districts to develop enforceable policies for these matters even though DEC does not have any permitting authority for federal waters. There also appears to be no provision in the consistency review regulations for districts to comment on DEC's consistency finding that is submitted to the DNR for OCS issues.

The EIS should include a complete analysis of how state OCS reviews would occur and what environmental effects might occur without district policies and district participation in the process. Although DNR has been asked repeatedly to explain how OCS reviews would occur, it has not yet done so. A real-life, rather than a theoretical, project should be selected to determine how a review would be conducted.

#### CONCENTRATION OF DECISION MAKING AUTHORITY

The purpose of the ACMP is to ensure "the orderly, balanced utilization and protection of the resources of the coastal area" (AS 46.40.020). The concentration of decision-making authority in DNR, however, has removed a number of mechanisms that helped ensure that this balance was achieved. Changes to the program have eliminated important "checks and balances" that were part of the former ACMP.

Elimination of the Coastal Policy Council (CPC) removes the diversity of agency and district influence from coastal decisions. With the abolition of the CPC, the diverse mandates of the state agencies and coastal districts have been replaced with the ability for a single commissioner to make unilateral decisions. In addition, DNR's June 2 description of the ACMP states that districts will no longer have seats on the ACMP Working Group, a body until now composed of district and state agency staff.

Project appeals, called elevations, are now decided by the DNR commissioner rather than jointly by the three resource agency commissioners. This change in conjunction with the prohibition of lawsuits for ACMP consistency determinations concentrates decision-making power in a single commissioner.

A reorganization of state agencies provides a further concentration of coastal decision-making power in one agency. The elimination of the Division of Governmental Coordination (DGC) and transfer of the ACMP to DNR eliminates the impartiality afforded when the program was within the Governor's Office. In addition, the transfer of the former Division of Habitat into DNR eliminates the diversity of opinion that was present when this division was part of the Alaska Department of Fish and Game.

#### **CUMULATIVE EFFECTS**

The North Slope Borough has considerable concerns about how the cumulative impacts of projects will be managed under the proposed changes to the ACMP. The concerns include the cumulative impacts of multiple projects as well as the cumulative impacts of all of the changes to the ACMP. The conclusions and recommendations of the 2003 National Research Council report on the Cumulative Environmental Effects of Oil and Gas Activities on Alaska's North Slope should be addressed in the EIS in light of the changes to the ACMP. It is especially important that the EIS address the significant new restrictions on the crafting of district enforceable policies and greatly diminished local role in the program as an addition to the sociocultural impacts that have already occurred within our population. An increasing sense of powerlessness to influence the management of the ever-increasing industrialization of the Inupiat homeland brings with it a variety of social stresses and ills that must not be ignored.

#### TRIBAL CONSULTATION

During development of the EIS, there should be a strong emphasis on involving tribal governments in the process. This involvement is required in both the EIS regulations and two executive orders. The inability of districts to develop meaningful enforceable policies and other changes to the ACMP will inevitably result in disproportionate impacts to Native people. The analysis of impacts to Native people should include a comparison of project effects in areas with local government and in areas outside of organized municipalities (i.e., coastal resource service areas). To date, there is no indication that OCRM has even considered a strategy for environmental justice or government-to-government consultation.

#### CONCLUSION

All of the changes to the ACMP consistency review process should be evaluated in the EIS to determine possible coastal effects of the changes. Far from being the routine

program change that was sold to the Alaska Legislature to start this amendment process, what the state is now proposing is a major program overhaul clearly intended to produce more and faster development within our state's coastal zone. As difficult a prospect as it may be, OCRM must try to identify the nature and scope of impacts that will result from the amendment. We encourage you to take the time necessary to do justice to this task and to the people and resources of Alaska's rich, expansive, and diverse coastal zone.

Thank you for considering these comments.

Sincerely,

George N. Ahmaogak, Sr.

Mayor

CC

Bill Millhouser, OCRM
Tom Irwin, Commissioner, Alaska Department of Natural Resources
Bill Jeffress, Director, Office of Project Management & Permitting, DNR
Senator Lisa Murkowski
Senator Ted Stevens
Congressman Don Young
Rex Okakok, Director, NSB Planning
Charlie Brower, Director, NSB Department of Wildlife
Robin Koutchak, Assistant NSB Attorney
Dennis Roper, NSB Mayor's Office



### Alaska Eskimo Whaling Commission

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August 3, 2005

John R. King
Responsible Program Officer
Coastal Programs Division
Office of Ocean and Coastal Resource Management
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

John.King@noaa.gov

Re: Comments On Suggested Alternatives and Potential Impacts of Federal

Approval of the Amended Alaska Coastal Management Program

Dear Mr. King:

The Alaska Eskimo Whaling Commission appreciates the opportunity to submit the enclosed comments on alternatives and potential impacts of the amended Alaska Coastal Management Program.

In addition to these comments, the AEWC supports the comments submitted to you by the North Slope Borough.

If you have any questions, please do not hesitate to call me.

Sincerely,

Maggie Ahmaogak

**Executive Director** 

CC: AEWC Commissioners

MAYOR GEORGE N. AHMAOGAK, SR. NORT

MAYOR GEORGE N. AHMAOGAK, SR., NORTH SLOPE BOROUGH

## COMMENTS OF THE ALASKA ESKIMO WHALING COMMISSION TO THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT ON ALASKA'S AMENDED COASTAL ZONE MANAGEMENT PROGRAM

August 3, 2005

#### INTRODUCTION

The Alaska Eskimo Whaling Commission (AEWC), a not-for-profit corporation organized under the laws of the State of Alaska, represents the ten bowhead whale subsistence hunting villages of Barrow, Nuiqsut, Kaktovik, Pt. Hope, Wainwright, Kivalina, Wales, Savoonga, Gambell, and Little Diomede.

The AEWC and the North Slope Borough (Borough or NSB) have worked for more than thirty years to promote the co-existence of oil and gas development with our people's subsistence way of life. This approach not only is compatible with the Coastal Zone Management Act, it echoes the foundational principles of that Act: to preserve, protect, and develop the resources of the coastal zone. CZMA §303.

In enacting its amended ACMP, the state of Alaska seeks to dismantle the highly successful regulatory format that has evolved on the North Slope. In implementing the new ACMP, Alaska employs a process whereby it appears on paper to protect our subsistence resources and way of life, while in fact abolishing virtually all protections for our subsistence community, our resources, and their habitat.

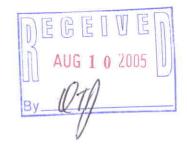
Therefore, the Secretary should reject the amended ACMP, at least as it applies to the North Slope Borough. He should advise the State that its program does not advance the national goals of the federal CZMA unless the State authorizes the Borough to write enforceable policies that accomplish the balance between development and protection of coastal resources, including subsistence and habitat.

#### COMMENTS

- SCOPING UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT IS PREMATURE BECAUSE THE REVISED ACMP DOES NOT MEET THE REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT § 306(d).
  - A. Contrary to Congressional Requirements in the CZMA, Alaska Has Failed to Coordinate its Program with Coastal District Management Plans in Place on January 1, 2005. CZMA § 306(d).

Page 1 of 15

AEWC Comments on Amended ACMP OCRM August 3, 2005



In the CZMA, Congress requires that states coordinate their programs with local plans in place on January 1 of the year in which the state's program is submitted to the Office of Ocean and Coastal Resource Management (OCRM). CZMA §306(d)(A). Alaska has not done this. Instead, the State arranged for the existing North Slope Borough and other district plans to terminate, on July 1, 2006, and then instructed the Borough and other coastal districts to develop new plans, the devised and predetermined ineffectiveness of which is discussed below. Thus, from the perspective of CZMA §306(d), Alaska in fact has done the opposite of what Congress required – the coordination of State revisions with local plans already in existence at the time of submission to OCRM. Rather, Alaska has terminated existing local plans.

In its Program Description for the Alaska Coastal Management Program, submitted on June 2, 2005 (hereafter, Program Description), the Alaska Department of Natural Resources (DNR) states that its "networked consultation process with existing plans was in place on January 1." Program Description, p. 33. Congress, however, does not require Alaska to have a "consultation process" in place on January 1. Congress requires that the Secretary, before approving the ACMP, find that Alaska has coordinated the plan with the existing North Slope Borough and other coastal district plans. In this case, the Secretary cannot make such a finding because this is not what Alaska has done.

Alaska, in its failure to coordinate with the Borough's plan, denies itself the benefit of the experience represented by the Borough's successful history of facilitating development while protecting subsistence resources. For almost twenty years, the Borough has used its coastal zone authority to help bring the climate surrounding oil and gas development on the North Slope from one of conflict and litigation to one of cooperation and mutual respect. If Alaska had taken the time to coordinate its plans to revise the ACMP with the Borough's existing plan, the state might have recognized the strength of the Borough's regulatory scheme.

B. Alaska Has Failed to Establish an Effective Mechanism for Continuing Consultation and Coordination Between the DNR and the North Slope Borough. CZMA §306(d)(3)(B).

Instead of establishing an effective mechanism for consultation and coordination with the Borough and other coastal districts, Alaska in the new ACMP sharply diminishes the role of coastal districts. Under the former ACMP, the coastal districts, as voting members of the Coastal Policy Council, worked directly the State to manage coastal development. In addition, coastal districts had seats on the ACMP Working Group. Under the new ACMP, coastal districts have no meaningful role in Alaska's coastal management process.

Page 2 of 15

The DNR created four mechanisms for continuing consultation and coordination with coastal districts and other state agencies. These include DNR's unilateral policy-level decision-making authority, the State's unilateral authority to implement district plans, maintenance of the ACMP website, and finally, the ACMP Working Group. Program Description, p. 30.

The first two mechanisms involve unilateral state action. The maintenance of a website does not belong on the list because it does not involve any consultation or coordination with districts. Therefore, of these four mechanisms, only one—the ACMP Working Group—would appear to involve consultation or coordination with coastal districts. Even here, however, the mechanism for consultation and coordination remains unclear. The DNR offers only a vague description of their role: districts "participate voluntarily" and are permitted to address issues "that affect local implementation." Program Description, p. 32.

Thus, Alaska at this time has no well defined and effective mechanism for continuing consultation and coordination with the North Slope Borough and other districts, as required by CZMA §306(d).

II. IF THE SECRETARY APPROVES THE NEW ACMP, HE THEN MUST DISALLOW ONGOING CZMA FUNDING FOR ALASKA IN LIGHT OF THE STATE'S FAILURE TO ADHERE TO THE STATUTORY AND REGULATORY PROVISIONS OF ITS NEW COASTAL MANAGEMENT PLAN.

The Secretary's responsibility under the CZMA is two-fold. First, the Secretary must determine whether the ACMP is consistent with Congressional requirements and policy as stated in the CZMA §302, §303, & §307. Second, if the Secretary approves the ACMP, he must make an ongoing determination that in implementing its plan, Alaska remains in compliance with the approved plan, including the CZMA's Congressional directives. CZMA §312.

A. Contrary to its New Coastal Management Plan, Alaska Arbitrarily Has Prohibited the North Slope Borough from Establishing a Subsistence Priority to Protect Our Traditional Subsistence Community During this Period of Intense Oil and Gas Development.

As both state and federal regulators are aware, establishing a subsistence priority to protect our subsistence uses during this period of intense oil and gas development is critically important to the survival of our community. Accordingly, as discussed below, the ACMP, accompanying regulations, and DNR's clearly stated position on subsistence priority would appear to set the stage for the Borough to establish an enforceable policy regarding subsistence priority on the North Slope.

Page 3 of 15

AEWC Comments on Amended ACMP OCRM August 3, 2005 Contrary to the appearance given by the new ACMP, however, Alaska has rejected virtually every attempt by the Borough to protect subsistence uses in our coastal zone.

To see how Alaska is accomplishing this end, one first must understand the State's limits on district actions and how these seemingly reasonable limits become triggers for arbitrarily denying virtually all local policies. In the ACMP, Alaska limits district enforceable policies to "uses, activities, and impacts" identified in statewide standards. 11 AAC 112. Thus, in the language of DNR, district enforceable policies must "flow from" a statewide standard. Program Description, p. 74 However, issues that are the subject of Borough policies cannot be "adequately addressed" in the statewide standard. This is because Alaska additionally limits district enforceable policies to matters not adequately addressed by state or federal law. 1

In its Program Description, DNR offers two scenarios in which a district may write an enforceable policy under the "not adequately addressed" standard: The first scenario is one in which a regulatory agency has not acted to address the matter. The second scenario is one in which the district finds that a statute or regulation is not sufficiently specific to address the matter. "In this case," writes DNR, "a coastal district...could write an enforceable policy that is more specific." Program Description, p. 78.

It thus appears that Alaska anticipates districts writing enforceable policies in circumstances where: (1) the issue addressed in the policy is identified in or "flows from" a statewide standard, and (2) the issue is a matter of local concern that is "not adequately addressed" in state or federal law or regulations.

 In the new ACMP Alaska appears to give the Borough authority to protect our subsistence way of life through the creation of a subsistence priority.

Subsistence is among Alaska's enumerated statewide standards. Therefore, it would appear that a Borough enforceable policy on subsistence priority would be permissible as "flowing from" this statewide standard. Furthermore, while Alaska law, by including it in a state-wide standard, identifies subsistence as important to the State, neither state nor federal law specifies the relative importance of subsistence when compared with other activities. Thus a Borough policy on subsistence priority also would appear to meet the requirement that the Borough policy not be "adequately"

<sup>&</sup>lt;sup>1</sup>11 AAC 114.260(d). A "matter of local concern" is one that, among other things, is "not adequately addressed by state or federal law." AS 46.40.070(a)(2)(C)(ii).

addressed" in state or federal law or regulations.2

 In formal policy statements, DNR unequivocally has delegated the responsibility for establishing subsistence priorities to the Borough and other districts.

According to DNR, the State <u>cannot</u> establish a subsistence priority because to do so "would not pay proper deference to the persons 'most familiar with local conditions and who have the traditional political right and responsibility to govern general land use." Program Description, p. 224. According to DNR, "the designation [of a subsistence priority] should be in the hands of the districts...districts have the right and responsibility to establish enforceable policies, including the designation of a subsistence priority, so long as that policy is a 'matter of local concern'..." Program Description, p. 224. Furthermore,

"while a statewide subsistence priority is not appropriate, a district subsistence priority in a designated area important for subsistence use is appropriate and encouraged. This is the entire reason for the lengthy requirements at 11 AAC 114.230...11 AAC 114.240...and 11 AAC 114.250 ...to require districts to comprehensively inventory, analyze, and designate the local uses and resources that require extra protection in the ACMP consistency review process." Program Description pp. 84-85.

3. Inexplicably, however, DNR has rejected the Borough's policy on Subsistence Priority in contradiction of the plain language of the ACMP and its regulations, as well as the agency's own stated policy.

Given the critical importance of subsistence to our community, a subsistence priority was the very first enforceable policy set forth in the Borough's new district plan, submitted to DNR for review on April 20, 2005. Despite its statute, regulations, and formal policy statements, DNR rejected the Borough's subsistence priority policy on the grounds that

<sup>&</sup>lt;sup>2</sup>11 AAC 112.270. Subsistence. (a) a project within a subsistence use area...must avoid or minimize impacts to subsistence uses of coastal resources. (b) For a project within a subsistence use area...the applicant shall submit an analysis... of reasonably foreseeable adverse impacts of the project on subsistence use...(c) Repealed. (d) The department may...after consultation with the appropriate district...designate areas in which a subsistence use is an important use of coastal resources as demonstrated by local usage.

<sup>11</sup> AAC 114.250(g). [Subsistence Use Designations.] For an area designated by a district under 11 AAC 114.250(b)-(i), ... a district may adopt enforceable policies that will be used to determine whether a specific land or water use or activity will be allowed...

the state Subsistence standard...already provides subsistence use prioritization and protection, disallowing a policy declaring a subsistence use priority. The rationale...that existing State and federal laws are "inadequate" impermissibly sidesteps the regulatory prohibition against a policy written on a matter already addressed by state law. North Slope Borough Coastal Management Plan (NSBCMP): Policy Analysis Table, p. 3.

Thus, Alaska will not-and now the Borough cannot-give priority to the protection of our subsistence way of life.

- B. Contrary to the New ACMP, Alaska Arbitrarily Prohibits the North Slope Borough from Protecting Our Community's Access to Our Subsistence Resources.
  - Alaska's new statute and regulations appear to give the Borough authority to establish an enforceable policy governing subsistence access.

As described above, under the ACMP and its regulations, Borough enforceable policies may be written only to matters that are identified in a statewide standard, but that are not "adequately addressed" in that standard or in other state or federal law. As with the previous example, Alaska has identified subsistence in its enumerated statewide standards, but has not specified the conditions under which the need for access to subsistence resources is to be met. Subsistence access also is not addressed in federal law. Therefore, a Borough enforceable policy on subsistence access would appear to be permissible as "flowing from" a statewide standard and not being "not adequately addressed" in state or federal law.

 Again, DNR's rejection of the Borough's policy on subsistence access contradicts Alaska's representations made through its new statute and regulations, and further contradicts DNR's own statements on permissible district policies.

In rejecting the Borough's enforceable policy on Subsistence Priority, as noted above, Alaska informed the Borough that it the Borough could not establish an enforceable policy on this issue because (in direct contradiction of other statements by the State), DNR concluded, the issue of Priority is specifically addressed in the State's standard on Subsistence. However, on Turning to the matter of Subsistence Access, Alaska holds that the Borough may not enact an enforceable policy protecting subsistence access because the issue is not specifically addressed in a statewide standard.

Page 6 of 15

Whatever the words of the ACMP and whatever the regulations and official statements made by the State with respect to the ACMP, Alaska's <u>actions</u> demonstrate its true intent—to deny the Borough the opportunity, guaranteed by Congress in the CZMA, to participate in the protection of our coastal zone. CZMA §302(i) & §303(2)(i). As the two preceding examples illustrate, Alaska's actions not only belie its official words, the State does not even seek to be internally consistent in its denial of Borough policies.

C. In Its Rejection of Approximately 41 Out of 44 Enforceable Policies in the Borough's New Coastal Management Plan, Alaska Employs Rationales That Are Arbitrary, Internally Inconsistent, and Self-Contradictory.

The following examples illustrate the arbitrary and capricious nature of DNR's rejection of Borough policies.

Alaska rejects the Borough's policy protecting our "level of [subsistence] need." Unlike commercial uses, which are profit driven, subsistence take is a self-limiting activity undertaken only to the level of a community's "subsistence need". "Level of [subsistence] need" is a term widely used in both federal and international law in reaching agreement on parameters for subsistence take.

Alaska has rejected the Borough's policy protecting our subsistence harvest at our "level of [subsistence] need" on the grounds that, according to the State, this matter already is covered in the statewide standard on Subsistence. Contrary to other rejection statements, DNR's grounds for rejecting this policy is that it does not "flow from" a statewide standard. Policy A-4: Project Disturbance to Subsistence. NSBCMP: Policy Analysis Table, p. 4.

In other rejection statements, however, DNR uses the "does not flow from" trigger to reject policies that it claims <u>are not</u> identified in a statewide standard rather than policies that <u>are</u> identified in a statewide standard. Policy C-5: Erosion; and Policy C-2: Specific Habitat Protection. For the latter, DNR elsewhere has used the "adequately addressed" rejection trigger. Policy A-1: Subsistence Use Priority, Policy A-3: Appropriate Safeguards to Protect Subsistence.

Alaska disallows Borough policy on the mitigation of adverse industrial impacts to our subsistence hunt. In its attempt to formulate an acceptable policy to protect our bowhead whale subsistence hunt from adverse industrial impacts, the Borough employed the long-standing "no unmitigable adverse impact" standard. Senator Stevens originally coined this standard in the 1986 amendments to the

Page 7 of 15

Marine Mammal Protection Act, and federal, state, and local agencies have used the phrase widely ever since, as the umbrella under which the community and developers negotiate "mitigation" measures that facilitate oil and gas operations while protecting subsistence uses.

Despite the successful use of the "no unmitigable adverse impact" standard in Alaska for almost 20 years, the State now finds its inclusion in the Borough's policy to be "impermissible", on the grounds that the Borough may not amend the statewide Subsistence standard by adding the term "mitigation" to it. NSBCMP: Policy Analysis Table, p. 5, Policy A-6: Subsistence Whaling. In the following example, the State rejects a proposed Borough policy on the grounds that, according to DNR, the statewide Subsistence standard already contains the word "mitigation", even though it actually does not.

Alaska contradicts itself in prohibiting the Borough from protecting bowhead whale habitat. In its enforceable policy providing specific protections for bowhead whale habitat, the Borough notes that the policy applies to "offshore areas designated for important habitat and for subsistence." The Borough's rationale in enacting the policy is that it is seeking to provide specificity beyond that provided in state and federal laws. NSB Policy C-1: Bowhead Whale Habitat.

Since the ACMP includes statewide standards on Habitat and Subsistence, this policy would appear to be permissible under the "flow from", but "not adequately addressed" triggers. DNR rejects this standard, however, stating that "impacts to habitats and subsistence uses are matters adequately addressed though [sic] the mitigation sequence under the state standards for...Habitats and...Subsistence. NSBCMP: Policy Analysis Table, p. 8; Policy C-1: Bowhead Whale Habitat.

As noted above, DNR's denial here contradicts its statement of the rationale for denying the Borough's use of the "no unmitigable adverse impact" standard. In that denial, DNR tells the Borough that it cannot add "mitigate" to the statewide Subsistence standard. In this denial, DNR tells the Borough that the statewide Subsistence standard already includes the term "mitigate."

The State's rationale for the present denial also demonstrates a misunderstanding of its own statewide standard on Habitat. In the State's Habitat standard, the phrase, "to avoid, minimize or mitigate" applies to competing uses of a resource, not to competing uses of the resource's habitat. 11 AAC 112.300(b)(1). Conversely, the intent of the Borough policy is to address competing uses of habitat, a matter not adequately addressed in the statewide Habitat standard. The State denies the Borough policy nonetheless.

Page 8 of 15

The State prohibits the Borough from protecting habitat for specific coastal species. In its enforceable policy providing specific habitat protection, the Borough notes that the "statewide Habitats policy does not include management measures for coastal species for the habitats listed in this policy." NSB Policy C-2: Specific Habitat Protection.

Again, this policy would appear to be permissible as "flowing from" but not being "adequately addressed" by the statewide standard. However, it too is rejected on grounds that "the district cannot require consideration of additional factors in implementing the avoid, minimize, mitigate sequence." NSBCMP: Policy Analysis Table, p. 8; Policy C-2: Specific Habitat Protection. If the Borough is not allowed to require consideration of additional factors, how can it develop policies that are consistent with the "not adequately addressed" trigger?

The foregoing examples are but a few of Alaska's contradictory and confounding reactions to the Borough's proposed enforceable policies. As these examples illustrate, Alaska does not intend to empower the Borough and other districts, although the language of the ACMP indicates otherwise. In fact, putting aside the impenetrable vagaries of Alaska's new statute and regulations, as well as DNR's circular and self contradictory reasoning, the end result is that Alaska has devised a process whereby it can appear on paper to protect our subsistence resources and way of life, while in practice removing virtually all protections for our subsistence community, our resources, and their habitat.

Congress did not enact the CZMA with the intent of rewarding states whose coastal management programs are no more than an empty exercise. For this reason, Congress instructed the Secretary to withhold funding from states who seek to mislead the federal government, as well as their own citizens, by developing coastal management programs that adhere to the CZMA's mandates in appearance only. Under these circumstances, even if the Secretary approves the ACMP, he does not have the authority to continue federal CZMA funding for Alaska. 16 U.S.C. §1458(c).

- III. THE DNR'S IMPLEMENTATION OF THE ACMP SEVERELY WEAKENS PROTECTIONS FOR SUBSISTENCE, HABITAT, AND THE SAFETY OF FUTURE PROJECTS.
  - A. The DNR's Arbitrary Implementation of the ACMP's Statewide Standards for Subsistence and Habitat Substantially Weaken Coastal Zone Protections on the North Slope and Set the Stage for Increased Conflict Between North Slope Residents and Developers.

According to Congress, state coastal management plans, among other Page 9 of 15

AEWC Comments on Amended ACMP OCRM August 3, 2005 things, must preserve, protect, restore or enhance coastal resources. CZMA §303. Alaska's new statewide standards for subsistence and habitat protection are written so generally, however, that they are ineffective in application. In implementing these standards and its regulations, DNR further undermines the ACMP's effectiveness by prohibiting districts from compensating for the lack of specificity. This new approach to coastal zone management not only undermines coastal protections in Alaska generally, on the North Slope, it eliminates the Borough's strongest regulatory tool: its ability to draw developers to the table for discussion and negotiation. By ignoring the Borough's history of minimizing conflict, Alaska further weakens coastal protection along the North Slope by increasing the risk that coastal management issues will be resolved not by the State, nor by the Borough, but by the courts.

#### Alaska no longer has clear standards for protecting subsistence.

Alaska's new statewide standard for subsistence provides that project activities in areas designated for subsistence use shall "avoid or minimize" impacts to subsistence, but does not provide a definition for "avoid or minimize." When the Borough attempted, in its proposed enforceable policies, to define the phrase, DNR rejected the Borough's definition, reasoning that the statewide standard already addressed subsistence prioritization and protection through application of the—still undefined— "avoid or minimize" standard. The statewide standard is actually silent on subsistence prioritization, as noted above.

DNR also reasoned that the Borough impermissibly added a mitigation component to "avoid or minimize." In the Project Description, DNR says "avoid or minimize," while not defined, may not include the concept of mitigation because mitigation would *weaken* the subsistence standard. Program Description, p. 84.

The Borough's ability to use mitigation as a tool to permit otherwise inconsistent projects has been critical to striking a balance between development on the North Slope and protection of its subsistence resources and habitat. It is irresponsible for Alaska to decide unilaterally that mitigation weakens protections to subsistence. Alaska's having taken mitigation off the negotiating table closes off a major, historic regulatory avenue for the Borough.

 Alaska prohibits the Borough from compensating for the State's inadequate standards to protect habitat for subsistence resources, including the bowhead whale.

One way the State prohibits the Borough from protecting habitat of subsistence resources is to exclude local knowledge and accept only written scientific evidence of the biological productivity of an area proposed to be designated as

Page 10 of 15

important habitat under 11 AAC 114.270(g). Without local knowledge, habitat will be designated or denied designation based on incomplete data. Local knowledge often is a reliable source of information in location and protection of productive habitat. It should not be discounted entirely by the State, but should be considered a supplement to written scientific evidence.

Even if the district designates an important habitat area, the district is not permitted to write enforceable policies to manage that area except to allow or disallow a use or activity within the area. 11 AAC 114.270(g). This means that the Borough may not establish standards for projects with potential to adversely affect important habitat areas and subsistence resources using that habitat.

Alaska's statewide standards are overly general, but the State requires the Borough's enforceable policies to be impracticably specific.

Alaska has declined to produce standards that are specific and prescriptive enough to actually protect subsistence and habitat. However, the State denies districts the opportunity to supplement the statewide standards with more detailed district enforceable policies, other than to list activities that will be allowed or disallowed.

Although DNR declared that a district policy would be permissible if it made a general state law more specific, as illustrated above, DNR repeatedly denied the Borough's proposed policies on the grounds that the more specific aspect of the policy did not "flow from" a State standard, or that it impermissibly redefined a process or a term too specifically. See generally Policy A-4: Project Disturbance to Subsistence; Policy A-6: Subsistence Whaling; Policy C-1: Bowhead Whale Habitat; Policy C-2: Specific Habitat Protection ("district cannot require consideration of additional factors in implementing the avoid, minimize, mitigate sequence"); Policy C-5 Erosion; Policy C-6: Migration; Policy E-2: Seismic Surveys.

Rather than allow the Borough to establish specific standards for activities affecting the North Slope's subsistence resources and habitat, DNR defaulted to the districts' authority to list activities that would be allowed or disallowed in a particular designated area. This is unworkable because it requires the Borough to be capable of predicting every conceivable aspect of every future project, and whether that activity would have adverse impacts on subsistence resources.

The irony is that the State refuses to be specific in its enforceable policies, but prohibits the Borough from adding specificity to the standards by demanding an impracticable level of specificity in the form of activities the Borough will allow or disallow in a

Page 11 of 15

AEWC Comments on Amended ACMP OCRM August 3, 2005 designated area. DNR's intention is not to empower the districts, but to present a regulatory conundrum that in effect silences the Borough and its sister districts.

B. The "DEC Carve-out" Further Undermines Any Remaining Protections for Subsistence and Habitat on the North Slope.

Continuing in the spirit of restricting local district authority to the point of making it meaningless, DNR specifically has forbidden coastal districts from forming enforceable policies on all matters of air, land, and water quality. 11 AAC 112.310. This is known as the "Department of Environmental Quality or DEC Carve-out." The AEWC is incredulous that state regulators would shut coastal districts out of matters that are so integral to habitat and subsistence protection.

Notwithstanding the State's argument that districts can protect subsistence and habitat by designating important habitat and subsistence areas, DNR rejected every subsistence and habitat policy that the Borough proposed, many because the policies addressed matters regulated by the DEC. See Habitat policies: Policy C-5: Erosion (considerations of habitat and surface water quality); Policy C-12: Storage of Petroleum Products; Policy C-13: Siting of Solid Waste Disposal Facilities; Policy C-14: Air and Water Quality Monitoring. All of the foregoing pertained to habitat, but were disallowed because they overlap with matters under DEC's regulatory jurisdiction.

As is illustrated above, separating matters of air, land and water quality from matters of habitat effectively renders most district habitat policies null. This is not what Congress envisioned in the CZMA when it provided for local implementation of a coastal management program.

C. Borough Participation Has Never Been Obstructive to Coastal Zone Planning, but it Is Instrumental in Ensuring Safety and Environmental Integrity in Coastal Development Projects.

The Borough's and the AEWC's ability to participate in joint project review under the CZMA and former ACMP has never resulted in unnecessary delay of a project. What it has done, just as Congress intended, is enable us to discuss with state agencies and developers potential hazards that we can see because of our knowledge of the arctic environment.

In fact, only one project was ever disapproved under the former ACMP. In that case, an operator planned to drill from an ice island and to store oil in drums on the island if they found oil. The federal and state agencies saw no hazard in this plan and were prepared to approve it. However, in consistency review, the North Slope Borough and the AEWC were able to demonstrate to state officials the danger of this project, which

Page 12 of 15

was to be located in the shear ice zone, where the circulating ice pack and the shore fast ice meet. Had the operator gone ahead with this project, it could have had serious environmental consequences and could well have endangered the lives of those who would have worked on the ice island.

A different operator later applied to drill at the same site using a bottom-founded drilling structure. The Borough and the AEWC believed that this structure would be able to withstand the pressures of the shear ice zone, and we raised no consistency questions. This incident provides a perfect illustration of our community's approach to consistency review. For us, the purpose of consistency review is to ensure the safety and environmental integrity of a project.

Without the opportunity for local participation in the consistency review process, the state closes itself off from critical local knowledge, including this type of critical environmental and safety information. The State should avail itself of the coastal districts' local knowledge. In refusing to incorporate it into key matters of safety and environmental integrity, the State appears to have forgotten purpose of having local districts implement the ACMP.

#### CONCLUSION

AEWC whaling captains and crew continue to observe compounding adverse effects of oil and gas development on bowhead whales in the Beaufort Sea. Planning that does not meaningfully include local regulation will jeopardize our bowhead hunt, around which our community has built and sustains its culture and identity.

The Alaska legislature and Department of Natural Resources have assembled a coastal management program that simultaneously relaxes protective standards for subsistence and habitats while preventing the North Slope Borough from making policies that compensate for the inadequacies of the new State standards. The amended ACMP so limits the ability of coastal districts to write enforceable policies that the Borough and the AEWC effectively can no longer protect the subsistence hunt from coastal uses that, when carried out without definitive subsistence and habitat standards, are likely to have potentially serious adverse effects on the bowhead hunt.

The Secretary has a responsibility to approve a plan that strives to achieve the national goals in the CZMA preserve, protect, and develop the resources of the coastal zone. The revised ACMP, as applied to the Borough falls far short of those goals. Even worse, it prohibits the Borough from implementing policies to achieve them, and the subsistence residents of the North Slope and the coastal environment will bear the burden of the State's misguided approach.

Page 13 of 15

Email Sara Hunt@dnr.state.ak.us Date: May 11, 2005 Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788

Each policy was reviewed relative to each question below. Comments and discussion is provided only for those policies that do not satisfactorily meet all of the requirements of 11 AAC 112 and 11 AAC 114.

- Does the policy address a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i)? (OPMP will make this determination)
- Is the policy a matter that the Department of Environmental Conservation has the authority to regulate? (DEC only) C;
- Does the policy adopt, duplicate, repeat, restate, paraphrase or incorporate by reference a state standard or other state or federal law per 11 AAC 114.270(c)? If Yes, please provide citation and summary of relevant law: 'n
- Is the policy clear and concise as to the activities and persons affected by the policies and the requirements of the policies? 4
- Does the policy use precise, prescriptive and enforceable language?
- Does the policy address a matter regulated or authorized by state or federal law? If Yes, please provide the citation and brief summary of the law: 9
- If Yes to #6, discuss the sufficiency of the following (to establish that it is a "matter of local concern," per AS 46.40.070(a)(2)(C)):
- Does the policy relate to a specific coastal use or resource within a defined portion of the district's coastal zone? Is the area defined in narrative or on a map?
  - Does the policy relate to a coastal use or resource that is sensitive to development?
- Does the policy address a coastal use or resource that is not adequately addressed by state or federal law?
- Does the policy relate to a coastal use or resource that is of unique concern to the district through documentation of local usage or scientific evidence? Are the criteria to establish that the policy addresses a matter of local concern (above) documented? 9 0
- Does the policy arbitrarily or unreasonable restrict a use of state concern as defined at 46.40.210(12), referenced in 46.40.060, 114.260 and 114.270(e)(4) and discussed in CPC Resolution #13? (See http://www.alaskacoast.state.ak.us/Plans/Plans/mendmentResources.htm) œ.
- Does the Resource Inventory describe, in a manner sufficient for plan development and implementation, 6
- natural resources and those habitats listed in 11 AAC 112.300, including important habitats proposed for designation;
  - major cultural, historic, prehistoric, and archeological resources;
    - recreational resources; and
- coastal resources important to subsistence uses

If No, identify necessary information in the resource inventory and analysis needed to support the policy.

- 10. Does the Resource Analysis describe the impacts of uses and activities, in a manner sufficient for district plan development and implementation,
  - the present and reasonably foreseeable needs, demands, and competing uses for coastal zone habitats and resources; the reasonably foreseeable direct and indirect impacts of uses and activities,
    - the suitability of habitats, natural hazard areas, and resources for development;
- the sensitivity of habitats, natural hazard areas, and resources to development; and
- potentially or reasonably foreseeable conflicts among coastal zone uses and activities.

- 11. Is there sufficient documentation of local usage or scientific evidence regarding a use or resource of unique concern that is the subject of an enforceable policy?
- 12. Does the policy allow or disallow a use or activity per 11 AAC 114.270(g)? If so, does the policy only apply to a designated area, AMSA or a SAMP?
- 13. Does the policy only apply to a designated area? If so, are federal lands excluded? Is it clear that the policy identifies the designation to which it applies and where the description maps and backup can be found?
- Are the maps adequate to support the enforceable policy they relate to? Is the scale sufficient to discern if a project is in or out of the area? Are labels, legends and references accurate? 4
- 15. Can you recommend additional resources or maps that may be helpful to the coastal district regarding this policy?

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
Policy A-1: Subsistence Use Priority Subsistence use of plants, fish and wildlife, including marine mammals, is the highest priority use of the lands and waters in the coastal area.  Subject Use: This policy applies to areas designated for subsistence use.  Rationale: Subsistence use of coastal resources of the land and waters in the NSB has been the priority use of coastal resources for thousands of years. State and federal laws are inadequate because they do not establish a subsistence use priority.	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), already provides subsistence use prioritization and protection, disallowing a policy declaring a subsistence use priority. The rationale for the proposed policy, that existing state and federal laws are "inadequate," impermissibly sidesteps the regulatory prohibition against a policy written on a matter already addressed by state law.
Policy A-2: Subsistence Access Project activities shall maintain traditional access to subsistence resources unless the applicant: i. provides alternative access that is acceptable to the borough, or ii. improves access to subsistence resources, or  Subject Use: This policy applies to areas designated for subsistence use.  Rationale: This policy is necessary because state and federal laws do not adequately address this issue of local concern. These laws do not ensure access to subsistence resources.	The state standard for Subsistence at 11 AAC 112.270 does not address "access." Therefore the proposed policy does not flow from the standard. The district could address access to, from, or along areas designated for subsistence use under the state standard for Coastal Access, if the designated areas are in or along coastal waters.
Policy A-3: Appropriate Safeguards to Protect Subsistence	The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34),

that describes, in clear, concise and prescriptive terms, what "adverse impacts"

"impacts" from 11 AAC 112.990(34) are not defined in the ACMP regulations.

If the term "adverse impacts" is not already defined, addressed or regulated by the Boards of Fish and Game, it could be defined by the district, in a manner

ii. Sets forth appropriate mitigation measures to ensure no unmitigable adverse

using scientific information and local knowledge, and

impact to the availability of subsistence resources for taking for subsistence use at the level necessary to meet community need.

i. Adequately assesses potential impacts of the project on subsistence uses

a) The coordinating agency and the borough shall determine that the

subsistence effects analysis required by 11 AAC 112.270;

already provides adequate subsistence use prioritization and protection. While

the state standard addresses the steps required in conducting an "avoid or minimize" sequencing process analysis, the terms "adverse impacts" and

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

#### b) For projects with a potential to significantly impact subsistence, as determined by the borough, the applicant shall:

- i. Circulate the subsistence effects analysis to stakeholder peer review, and
- ii. Include a provision in the project description for annual stakeholder peer reviewed monitoring of proposed alternative measures to ensure the measures are effective in meeting the enforceable policies.
  - Subject Use: This policy applies to areas designated for subsistence

use.

Rationale: This policy is necessary because state and federal laws do not adequately address this issue of local concern. The statewide subsistence standard requires an analysis or evaluation of reasonably foreseeable impacts to subsistence, but there is no provision to determine adequacy of the analysis.

### Policy A-4: Project Disturbance to Subsistence

- a. Project activities shall not have an unmitigable adverse impact on the availability of subsistence resources for taking for subsistence use at the level necessary to meet community need. Specific measures to avoid or minimize effects to subsistence may include, but are not limited to, the following:
- Scheduling flights and other noise-producing activities to avoid disturbance to subsistence hunting activities,
  - Imposing height and distance buffers for aircraft in areas used for subsistence, and
- conflicting uses in the project area, and

  iv. Scheduling activities at times when subsistence resources are not present or
  subsistence taking of resources is not occurring.

iii. Coordinating project schedule with subsistence hunters and fishers to avoid

b. When a project would significantly affect subsistence uses and there is a public need for the project, as determined by the borough, mitigation may be necessary to maintain the subsistence priority. The project may be approved if the applicant adopts alternative measures into the project description that are

### COMMENTS / DISCUSSION:

would affect precisely what subsistence uses in the designated area. Note that overly general phrases like "depletion of resources below the level needed to sustain sufficient harvest" would be disallowed as vague and lacking predictability of application. The study must tie to the subsistence uses for which the area was designated.

This policy flows from 11 AAC 112.270(b)(1) and (2) which requires an analysis or evaluation of reasonably foreseeable adverse impacts to the subsistence resources or uses for which the area was designated The policy must be reworded to clarify that the analysis must be submitted with the consistency review packet, or the consistency evaluation, in accordance with the state standard. The coastal district, along with the state resource agencies, would review the information during the consistency review process. This change is necessary to conform to the consistency review process, and to provide some certainty as to when the assessment is required.

Because the state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), already provides subsistence use prioritization and protection., the policy is impermissible. "Level of need" does not flow from 11 AAC 112. 270, therefore the policy is not allowed. This policy does not appear to link to the requirement for an analysis or evaluation, so the statement in the rationale is confusing. Further, the district's stated rationale contravenes the regulations in amending the "avoid or minimize" sequence by adding a mitigation component.

Under 11 AAC 114.270(g) a district may specify whether a use or activity is allowed in designated areas. The district could rewrite this policy to specifically disallow development or flights or other noise disturbing activities either year round or during specific times of the year. The district must show that the impacts of these activities are not adequately addressed by other state or federal law. Also, the impacts must tie to the uses or resources for which the area is designated.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

COMMENTS / DISCUSSION:

#### POLICY TEXT:

#### acceptable to the district.

use.

Subject Use: This policy applies to areas designated for subsistence

Rationale: This policy is necessary because state and federal laws do not adequately address this issue of local concern. The statewide subsistence standard requires an analysis or evaluation of reasonably foresceable impacts to subsistence, but there is no provision to determine adequacy of the analysis. The statewide standard does not include a provision for mitigation, however, there may be instances where public need would make mitigation necessary to ensure the ongoing availability of subsistence resource for taking to meet community need. In addition, the statewide standard does not include this level of specificity.

#### Policy A-5: Visual Compatibility

To the extent practicable with consideration of social, cultural and environmental factors, facilities and structures shall be designed to blend in with the surrounding landscape. Applicants shall consult with the NSB Planning Department when designing facilities that are proposed to be sited in areas important for subsistence use.

Subject Use: This policy applies to areas designated for subsistence

Rationale: This policy is necessary because state and federal laws do not adequately address this issue of local concern. Specifically, these laws do not address the subject of visual compatibility of development with subsistence.

#### Policy A-6: Subsistence Whaling

Offshore activities shall not have an unmitigable adverse impact on the availability of bowhead whales for taking for subsistence use to meet community need in the subsistence hunting areas identified on Map 16 for the communities of Kaktovik, Nuiqsut, Barrow, and Point Hope. Activities in areas

See general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of social and environmental factors". The district must articulate clearly how visual compatibility ties to subsistence uses or resources in the resource inventory/analysis, in order to justify the policy. If the district could show the adverse impacts of visual incompatibility with subsistence uses or activities or to the resources which are used, then it may be possibly to allow/disallow certain types of structures, colors, building size or height, etc. Otherwise, the policy is impermissible due to the avoid, minimize sequence in the Subsistence standard, 11 AAC 112.270.

Use of the term, "unmitigable adverse impact" in a district policy is impermissible, as the mitigation of adverse impacts to subsistence use amends the "avoid or minimize" sequence by adding a mitigation component. The borough would be allowed to allow or disallow specific activities during a specified period that would have unacceptable impacts in designated subsistence use areas. For example, the policy could be written to disallow

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

labeled as "quiet areas" on the map shall not produce noise at levels that would deflect bowhead whales from their migration path. The coordinating agency shall consider both local and scientific knowledge when determining whether project activities have a potential to deflect whale migration. Activities shall not have an unmitigable adverse impact on the availability of beluga whales and other marine mammals in offshore areas for taking for subsistence use to meet community need.

Measures to ensure that activities do have an unmitigable adverse impact on the availability of whales and other marine mammals for taking for subsistence use to meet community need may include, but are not limited to, one or more of the following options:

- i. Area deferrals from oil and gas lease sales,
- ii. Limitations on development of permanent facilities,
  - iii. Use of bottom-founded drilling structures, and
- iv. Timing activities to occur outside of the subsistence hunting periods.

  Subject Use: This policy applies to areas designated for subsistence use. It also includes geographic location descriptions for subsistence

whaling, including areas of pursuit and harvest.

\*\*Rationale:\* This policy is necessary because state and federal laws do not adequately protect subsistence resources and uses in these areas. Map 15 identifies areas within state waters as designated subsistence use areas. Federal waters used by subsistence hunters are identified as a "geographic location description" for subsistence. A larger geographic location description includes all federal waters.

#### B. Cultural Resources

#### Policy B-1: Consultation and Surveys

Evaluation of potential impacts to cultural, historic resources and archaeological resources shall be the responsibility of the applicant. Applicants proposing to conduct activities that have a potential to disturb historic or archeological resources shall consult with the State Historic Preservation Officer (SHPO) and the NSB Planning Department prior to submission of a

### COMMENTS / DISCUSSION:

activities that produce a noise level above a specified decibel amount during specified months of the year (or year round).

The second part of the policy, which redefines the measures required to demonstrate that a project has avoided, minimized or mitigated adverse impacts to the availability of whales and other marine mammals for taking for subsistence use, is impermissible for the same reasons stated above. Again, the district could disallow any of the activities listed under i-iv by allowing or disallowing certain activities during specified time periods.

However, as oil and gas lease sales are uses of state concern, the district would have to document that such deferrals, or disallowance of oil and gas meet the requirements of AS 46.40.060(a) and 11 AAC 114.270(e) (See the Responses to the October 2004 Workshop Questions, answer no. 30, posted on the ACMP website.

Note: Maps 15, 16 (or maps 1-31) were not provided with the public review draft

As written, this policy is not enforceable.

For language that might work, see AWCRSA policies I-1 and I-2 and OPMP's comments, and Haines policy 5.10.3 and OPMP's comments.

POLICY TEXT:	COMMENTS / DISCUSSION:
inadvertent discovery of skeletal remains, work that would further disturb the remains shall cease immediately. The discoverer shall then contact a law enforcement officer (to determine if the remains are part of a crime scene), the landowner, SHPO, and the NSB, to be advised how to proceed.  Subject Use: This policy applies to areas designated for the study or understanding of historic and prehistoric resources.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy. The State Historic Preservation Act does not have the enforceability of this policy.	
C. Habitat Policy C-1. Bowhead Whale Habitat Activities in offshore areas shall not significantly affect bowhead whales including effects from noise.  Subject Use: This policy applies to offshore areas designated for important habitat and for subsistence.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not allowed. However, the district could allow or disallow specific activities during a specified period that would have unacceptable impacts in designated subsistence use areas. Areas designated for important habitat and for subsistence may not include federal lands or waters and may only reach to the 3 mile offshore limit (measured from mean high water of the shoreline). However, as the OCS is designated as a geographic location description, federal activities or activities subject to federal licenses and permits that would foreseeably affect the uses, resources or activities within the designated area would be subject to the state standards and all applicable district policies, under the proposed revisions to 11 AAC 110 and 112 currently under public review.
Policy C-2: Specific Habitat Protection  This policy addresses management measures for specific habitat types the statewide Habitats standard. Projects shall avoid, minimize or mitigate significant adverse impacts to the biological, physical and chemical productivity of in the following habitats for coastal species:  i. Offshore areas including effects to habitat for species using this habitat including sea ice (for species depending on offshore habitats including bowhead whales, other marine mammals and fish),  ii. Estuaries including nutrient, oxygen and silt levels including the	All provisions of this policy that do not flow from one of the delineated uses or activities identified in 11 AAC 112.200-112.240, 112.260-280 or 11 AAC 114.250 (b)-(i)are not permissible. Additionally, a district cannot redefine terms or processes already defined by state law. As such, the district cannot require consideration of additional factors in implementing the avoid minimize, mitigate sequence.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
relationship with fresh water sources (for species that depend on estuaries during an important life stage), iii. Wetlands, including nutrients and oxygen levels and the destruction of critical habitat (for migratory birds and other fish and wildlife that depend on wetlands during important life stages), iv. Tideflats including nutrient (for species dependent on tideflats habitats), v. Exposed high-energy coasts including coastal erosion (for species dependent on this habitat type), vi. Rivers, streams and lakes, including maintenance of instream flow in	
quantities needed to maintain productivity of species that use this habitat (for anadromous and resident fish and other species dependent on this habitat type), and  v. Upland habitat including natural drainage patterns, natural groundwater recharge, and habitat characteristics important for coastal species (for caribou, moose, muskox, bear, and other species dependent on upland habitat).  Applicants shall identify specific measures in their project description that will meet this policy, and the coordinating agency shall require additional alternative measures, as necessary, to meet this policy.  Subject Use: This policy applies to areas designated as important habitat or for subsistence.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy. The statewide Habitats policy does not include management measures for coastal species for the habitats listed in this policy.	
Circle O With June 10	A policy must meet the criteria for all the designated areas to which the policy

Policies section in Comments and Findings document. Hence, this policy is not

minimize sequence in 11 AAC 112.270 the matter is adequately addressed for

areas designated for important habitat or subsistence. See Applicability of

applies. This policy does not flow from 114.250 (g) or (h). Due to the avoid,

minimize, mitigate sequence used in 11 AAC 112.300 and the avoid or

Water intake pipes used to remove water from fish-bearing waters shall use a screened enclosure so as to prevent fish entrainment and impingement. Pipes

Policy C-3. Water Withdrawal Criteria

and screening will be designed, constructed, and maintained so that the maximum water velocity at the surface of the screen enclosure is not greater

POLICY TEXT:	COMMENTS / DISCUSSION:
consistency certification to determine if a resource survey is necessary. SHPO or the NSB Planning Department may require the applicant conduct a resource survey by the request for additional information deadline.  Subject Use: This policy applies to areas designated for the study or understanding of historic and prehistoric resources.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.	
Dallow D 9. Cita Casaida Massurasa	As written, this policy is not enforceable.
The NSB or the SHPO may require an applicant to adopt site-specific measures into the project description for protection of historic, prehistoric or archeological resources.  Subject Use: This policy applies to areas designated for the study or understanding of historic and prehistoric resources.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.	For language that might work, see AWCRSA policies I-1 and I-2 and OPMP's comments, and Haines policy 5.10.3 and OPMP's comments.
Policy B-3: Previously Undiscovered Resources If previously undiscovered artifacts or areas of cultural, historic or archaeological importance are encountered during development, the applicant shall cease all further activities that could disturb the site and notify the NSB and the SHPO. SHPO, or another qualified cultural resource specialist, shall evaluate the resources in a timely manner.  Subject Use: This policy applies to areas designated for the study or understanding of historic and prehistoric resources.  Rationale: State and federal laws are inadequate because they do not include the specificity of this policy.	OPMP defers to SHPO on whether this policy is adequately addressed by other state or federal law.
Policy B-4. Graves Applicants shall avoid disturbance to all obvious graves. In the case of an	OPMP defers to SHPO on whether this policy is adequately addressed by other state or federal law.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

COMMENTS / DISCUSSION:

permissible.

#### POLICY TEXT:

### than 0.1 foot per second. Screen mesh size will not exceed 0.04 inch. Other technology and techniques may be used if the applicant demonstrates, to the satisfaction of the district, that these techniques will prevent the entrainment and impingement of fish may also be utilized.

**Subject Uses:** This policy applies to areas designated for important habitat and subsistence.

Justification: This policy is necessary to address this local concern. Healthy fisheries are important for commercial, subsistence and recreational fisheries. State and federal law does not provide this level of specificity water intake pipes.

### Policy C-4. Anadromous Fish Streams

- a) Facilities, other than crossings, shall be sited the following distances from specific types of waterbodies:
- 500-feet from anadromous water bodies,
- ii. 250-feet from headwater streams creeks and tributaries, and
  - iii. 100-feet from all other water bodies.
- b) These setbacks may be adjusted by the coordinating agency, with agreement of the borough, and with consideration of the following criteria:
  - Existence of a significant public need for the project activity,
- ii. Sensitivity of fish to the proposed activity,
- Characteristics and function of the habitat including existing instream and riparian vegetation,
- iv. Slope, soil type, and potential for erosion, and
- Other potential effects of the project on the physical, biological and chemical characteristics of the habitat.
  - c) Project activities, including instream activities and ice road crossings, shall not adversely affect fish passage or pools used by over-wintering fish. Subject Uses: This policy applies to fish streams in areas designated for subsistence use and important habitat.

    Justification: This policy addresses local concerns not adequately

Because a policy may allow or disallow specific uses or activities within a designated area, Section (a)would be permissible if the 500 feet on either side of the streams were designated as important habitat. A designation within a designation is acceptable. The policy would need to be rewritten to disallow facilities, other than crossings, within the specified distances. The policy will need to specify the mark from which the distance is measured (typically ordinary high water for rivers lakes and streams, and mean high water for the ocean or sea). The policy must reference the specific maps or descriptions to which the policy applies.

Section (b) is not permissible, as it redefines the avoid, minimize or mitigate sequencing criteria at 11 AAC 112.300 and 11 AAC 112.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
addressed by state or federal law. Subsection (b) of the statewide Habitats standard is vague and does not address this level of specificity. This policy is necessary to protect fish habitat and associated uses including subsistence and recreational fishing.	
Policy C-5: Erosion a) To the extent practicable and with consideration of social and environmental	This proposed policy is misplaced in the "habitats" section, and is consequently
factors, habitats shall be managed to minimize excessive runoff which will cause accelerated hydraulic or thermal erosion and to retain natural drainage	impermissible, as it does not flow from any habitat or subsistence standard.  Portions of the proposed policy could be allowable as pertaining to a
patterns, surface water quality, and natural groundwater recharge areas.  b) Development activities shall minimize removal of existing vegetative cover	designated erosion designated area, if that designation complied with the area designation criteria. See <i>Applicability of Policies</i> section in Comments and
in erosion-prone areas or areas subject to mass wasting. In cases where development necessitates removal of vegetation, erosion shall be minimized	Findings document.
through re-vegetation using native plants or by other appropriate erosion control measures.	Moreover, surface water quality is a matter regulated by DEC and is not allowed to be included within the enforceable policy.
c) All stream or lake bank cuts, fills or exposed earthwork adjacent to	May want to ensaity that re-waretation shall be done with notive ensaies
stabilized, to the extent practicable with consideration of environmental factors,	may want to speedly that to vegetation shall be done with hattye speedes.
to prevent erosion or sedimentation into adjoining waters during construction,	See general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of excial and environmental factors"
d) Other options for preventing and controlling erosion include, but are not	
limited to the following:	
i. Minimizing and limiting areas of ground disturbance near waterbodies,	
ii. Stabilizing disturbed areas as soon as possible after disturbance,	

Subject Uses: This policy applies throughout the coastal area in areas

iv. Scheduling activities to avoid high winds, waves, and seasonal flooding, and

v. Using best management practices identified in the Alaska Department of

Transportation and Public Facilities January 1997 publication, Best

Management Practices for Construction, Erosion and Sediment

Control and Maintenance and Operations Activities.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
designated for subsistence use, important habitat, and natural hazards.   Justification: Existing state and federal law is not adequate because it is not as specific as the policy. In addition, the definition of "practicable" under the statewide standards is limited to economic factors.	
Policy C-6: Migration  Projects shall not significantly affect migrations of coastal species. Applicants may adopt and the coordinating agency may require measures to prevent effects to migration including but not limited to:  i. Locating activities outside of major migration routes, ii. Scheduling activities during times when migrations are not occurring, and iii. Reducing noise from activities.  Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use, important habitat and natural hazards.  Justification: Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to migration.	Migration is not a "use or activity" about which a district enforceable policy can be written under 11 AAC 114.250. Moreover, the state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.
Policy C-7: Marine Mammal Haulouts and Seabird Colonies Project activities shall not significantly affect species using marine mammal haulouts or seabird colonies including effects that would result in disturbance, injury or mortality to these species.	Unless the district can demonstrates to the contrary in its resource inventory, analysis, and justification, seabird colonies and haul-outs and rookeries used by marine mammals are all habitats presently and adequately protected in the habitats standards at 11 AAC 112.300 (1)-(8). The management of those areas is limited to the aspects addressed in the regulations. As such, this policy is not

Subject Uses: This policy applies throughout the coastal area in areas

designated for subsistence use and important habitat.

haulouts and seabird colonies

Policy C-8: Nesting Areas

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
Where practicable, with consideration of environmental effects, project activities shall not result in significant disturbance to nesting and molting birds. Alternative measures to meet this policy include avoidance of nest sites and timing of activities outside the nesting and molting period.  Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use and important habitat.  Justification: Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to nesting and molting birds. Birds are exceptionally vulnerable to disturbance during nesting and molting periods.	Also, see general comments section on Enforceable Policies and use of "to the extent practicable and with consideration of social and environmental factors?

he s"

#### Policy C-9: Caribou Calving Areas

See comment disallowing proposed Policy C-7.

Project activities shall not significantly affect caribou calving areas during periods of calving. Measures to meet this policy include, but are not limited to, timing of activities outside of calving periods (generally between April 15 and May 15), location of activities away from calving areas, and use of convoys during calving periods.

Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use and important habitat.

Justification: Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to caribou calving areas. Female caribou and calves are extremely vulnerable to disturbance during this period.

### Policy C-10: Disturbance from Aircraft, Marine Watercraft and Other Noise-Producing Activities

When conducting activities with reasonably foreseeable impacts to sensitive habitats while species are present, applicants shall implement the following measures.

Fixed-wing and helicopter aircraft shall maintain a minimum altitude of 2,000 feet and aircraft, marine watercraft and other activities producing high-levels of

### See comment disallowing proposed Policy C-7. Recommend deleting the first sentence, and rewriting the second sentence to disallow fixed wing and helicopter aircraft within the specified distances, and specifying the level of noise that is allowed/disallowed.

Additionally, the term "sensitive habitats" is not defined and is thus impermissible.

POLICY TEXT:	COMMENTS / DISCUSSION:
noise shall maintain the following horizontal distances:  i. a 1.5-mile horizontal distance from important seabird colonies and rookeries (generally between April 15 and September 30),  ii. a 0.5-mile horizontal distance from marine mammal haul-out sites for walrus (generally between May 1 and December 31),  iii. a 0.5-mile horizontal distance from identified haul-out sites for seals (generally between March 1 and September 30), and  iv. a 0.5-mile horizontal distance for polar bear dens.  Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use and important habitat.  Justification: Existing state and federal law is not adequate because it is not as specific as the policy regarding disturbance to marine mammal haulouts and seabird colonies.	
Policy C-11: Kasegaluk Lagoon Project activities occurring on the barrier islands or in the marine and estuarine waters of the Kasegaluk Lagoon shall not interfere with the annual harvest of beluga whales, usually occurring the first week of July, or cause displacement of the whales.  Subject Uses: This policy applies in the Kasegaluk subsistence use area.  Justification: Existing state and federal law does not address the beluga subsistence hunt in Kasegaluk Lagoon.	See comment disallowing proposed Policy C-7.
Policy C-12: Storage of Petroleum Products Other than temporary storage of small quantities of petroleum less than 500 gallons for periods of less than seven days, applicants shall not store petroleum or petroleum products within 100 feet of any water body. This policy does not apply to storage of fuel on frozen water bodies.  Subject Uses: This policy applies throughout the coastal area in areas	Policies may not address air, land or water quality issues, therefore, as written, this policy is impermissible.

POLICY TEXT:	COMMENTS / DISCUSSION:
designated for subsistence use and important habitat.  *Justification:* Existing state and federal law does not address the specificity of this policy in regard to storage of petroleum products.	
Policy C-13: Siting of Solid Waste Disposal Facilities Solid waste disposal sites shall be:  i. located a minimum of 1,500-feet from domestic water supplies or anadromous water bodies and a minimum of 200-feet from any other water bodies unless a surface hydrological soils and drainage analysis justified another distance, and ii. designed, constructed and operated to avoid creation of an attractive nuisance for wildlife.  Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use and important habitat.  Justification: Existing state and federal law does not address the specificity of this policy in regard to siting of solid waste disposal facilities.	See comment disallowing proposed Policy C-12.
Policy C-14: Air and Water Quality Monitoring  Monitoring facilities for project effects to habitat, including air and water quality, shall be located away from other sources of emissions or effluent to ensure that accurate measurements can be obtained.  Subject Uses: This policy applies throughout the coastal area in areas designated for subsistence use and important habitat.  Justification: Existing state and federal law does not address the specificity of this policy in regard to siting of air and water quality monitoring. The improper siting of air quality monitoring equipment near Nuiqsut has raised concerns about the source of emissions.	See comment disallowing proposed Policy C-12.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

#### Policy C-15: Habitat Studies

determines a project may have reasonably foreseeable significant impacts, one When the coordinating agency, in consultation with the coastal district, or more of the following studies may be required:

study, analysis, or evaluation must address the resources, uses, or activities for

analysis, or evaluation to occur prior to the consistency review process. The

This policy redefines the consistency review process at 11 AAC 110 and is therefore not permitted. The policy could be rewritten to require a study,

COMMENTS / DISCUSSION:

activities. The policy must be clear as to who performs the study, analysis or

with the area was designated and address impacts to those resources, uses or

evaluation and how it is implemented. See the comments on proposed policy

- Drainage impact analyses,
- Site-specific drainage plans,
   Site restoration plans,
- iv. Erosion stabilization plans,
- v. Monitoring studies,
- vi. Cumulative effects, and
- vii. Other studies about project effects to fish and wildlife.

Studies shall be reviewed for sufficiency by the appropriate state agency or coastal district depending on their area of expertise or responsibility

studies. The need for site-specific studies and monitoring is not known Subject Uses: This policy applies throughout the coastal area in areas specificity of this policy in regard to requirement of monitoring and Justification: Existing state and federal laws do not address the designated for subsistence use and important habitat. until a specific project is proposed

#### D. Natural Hazards

### Policy D-1: Project Applications for Hazard Areas

packet about potential hazards and measures to avoid or minimize effects to the a) Applicants for projects located in natural hazard areas shall consult with the environmental from project activities that could be affected by natural hazards. North Slope Borough before submitting project applications to determine if b) Applicants shall provide a sufficient analysis in the project application there is applicable local knowledge about the hazards in the project area. The analysis shall include conservative estimates of hazard potentials.

Subject Uses: This policy applies throughout the coastal area in areas designated for natural hazards.

Justification: Existing state and federal laws do not address the

for with the area was designated and address impacts to those resources, uses or The study, analysis, or evaluation must address the resources, uses, or activities activities. The policy must be clear as to who performs the study, analysis or evaluation and how it is implemented. See the comments on policy A-3.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

#### COMMENTS / DISCUSSION: specificity of this policy in regard to information requirements for projects located in hazard areas. The statewide standard does not address local knowledge for hazard areas.

#### Policy D-2: Specific Natural Hazards

- a) Project facilities shall not be located in the following areas unless there is a Borough, and appropriate measures are proposed to avoid damage to life and significant public need for the facility, as determined by the North Slope the environment.
- i. Facilities not water-dependent or water-related that are located in areas subject to storm surges,
  - Facilities in areas subject to mass wasting or landslides,
- iii. Facilities subject to annual flooding that are located below the high-water mark or waterbodies,
- iv. Facilities subject to ice hazards including ice override, ridging, pack ice movement, ice gouging, strudel scour, or the active shear zone.
- such hazards are reasonably foreseeable shall prepare an ice management plan. for surveillance and detection of ice hazards and for reporting such hazards to appropriate agencies including the borough. Bottom-founded structures, other hazards and by the North Slope Borough. The plan shall describe the systems This plan shall be reviewed and approved by an engineer experienced in ice b) Applicants for projects located in ice hazard areas during the time where than ice islands, may be required in areas of extreme shear zones.
- c) Project activities shall incorporate the best available technologies into project Where disturbance to the organic mat is unavoidable, the disrupted area shall descriptions to prevent disturbance to permafrost, including thermokarst. be stabilized to avoid disturbance to the permafrost layer.
  - Subject Uses: This policy applies throughout the coastal area in areas designated for natural hazards.
- specificity of this policy in regard to protection to the environment and Justification: Existing state and federal laws do not address the life as a result of the interaction of project activities with natural

#### facility, as determined by the North Slope Borough." Last, the policy describes definition and process involved in determining "significant public need for the adverse conditions that present a threat to life or property in the coastal area," comments on policy A-3. The policy must require the ice management plan in "natural hazards," by delineating specifically which "natural process or other First, policies relating to natural hazards must clearly define district-specific designate specific areas "likely to be affected by the occurrence of a natural who prepares the ice management plan, and how it is implemented. See the hazard." 11 AAC 112.210. The policy is impermissibly unclear as to the are not already defined at 11 AAC 112.990. Thereafter, the district must advance of the consistency review in part b).

policy would be permissible if divided into separate policies, specific to each This policy is overly complex, as it applies to several different hazard types, type of hazard, with the appropriate map or description of the location of the each of which requires a separate designation and description or map. The natural hazard designated area included with the policy.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

POLICY TEXT:	COMMENTS / DISCUSSION:
hazards. The statewide standard does not address this level of specificity regarding criteria for allowing projects in the hazard areas described in this policy.	
E. Energy Facilities  Policy E-1: Oil and Gas Facilities  Oil and gas activities, including operation of facilities, shall be conducted to avoid significant impacts to subsistence, scenic, recreational, environmental, and historic and cultural resources. Facilities shall be designed and operated to be compatible with adjacent land or water uses, including subsistence. Oil and	The first sentence is impermissible, as the state Energy Facilities at 11 AAC 112.230 standard already describes the conditions for siting and approval of major energy facilities. The first criteria in that standard are "minimization of adverse environmental and social effects." The district could permissibly add specificity to those terms if they are fully and predictably defined.
gas operations shall not preclude public access to the extent practicable.  Subject Uses: This policy applies throughout the coastal area, and it applies to the statewide energy facilities standard. It also applies to	The second and third sentences are similarly impermissible as redefining the state Energy facilities standard, which already sets forth the conditions for siting and approval of major energy facilities.
Justification: This policy is necessary because state and federal law does not address this level of specificity. The statewide energy facilities standard does not address adequately address the issues covered by this policy.	Alternatively, the policy could be rewritten to disallow oil and gas facilities sales in areas designated for important habitats or subsistence. However, as oil and gas lease sales are uses of state concern, the district would have to document that such deferrals, or disallowance of oil and gas meet the requirements of AS 46.40.060(a) and 11 AAC 114.270(e) (See the Responses to the October 2004 Workshop Questions, answer no. 30, posted on the ACMP website.
a) To the extent practicable, with consideration of social and environmental effects, seismic surveys occurring on land or water will be located, designed, and conducted in a manner so as to avoid significant disturbances to fish and wildlife normalistics, behinds and subsistence and recreational harvest of fish	The policy does not flow from a use or activity identified in 11 AAC 112.200-112.240, 112.260-280, or 114.250 (b)-(i) and is therefore not approvable. Also, a seismic survey is not a major energy facility as it is not included in the definition at 11 AAC 112.990(14).
and wildlife. Depending on site-specific concerns, seasonal restrictions, restrictions on the use of explosives, or restrictions relating to the type of transportation used may be required by the coordinating agency with	The district may want to consider disallowing use of explosives or specific types of transportation in association with geophysical surveys during specific times of the year in areas designated for subsistence and important habitat.

consultation with the borough.

However, be aware that DNR regulates the use of explosives on state land

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

b) Seismic surveys in fresh and marine waters shall prevent effects to coastal uses and resources by using energy sources such as airguns and gas exploders or other techniques, other than blasting, that do not significantly effect fish and wildlife. Seismic surveys shall be timed to avoid impacts to subsistence hunting and fishing, marine mammal migrations, and migrating fish smolts.

Subject Uses: This policy applies throughout the coastal area, and it applies to the statewide energy facilities standard. It also applies to areas designated for subsistence and important habitat.

Instification: This policy is necessary because state and federal law about seismic surveys do not address this level of specificity or protection for coastal resources and uses. Noise from seismic surveys has been shown to affect fish and wildlife, including bowhead whales. Timing of surveys and use of survey techniques can minimize impacts to coastal uses and resources, including juvenile salmon and commercial and subsistence fishing.

### Policy E-3: Dismantlement, Restoration and Rehabilitation

a) Applicants shall include a plan for the dismantlement, restoration and rehabilitation (DRR) of oil and gas facilities as part of the project description. This plan shall include measures to return the area to pre-project conditions to the extent practicable with consideration of social and environmental factors.
b) Upon abandonment, project completion or expiration of permit authorizations, whichever occurs first, permitting agencies may amend required measures identified in the original plan if:

- i. there is a demonstrated future use for the site, or
- the original measures would cause greater adverse effects than the other measures.

Subject Uses: This policy is established pursuant to the statewide Energy Facilities standard and applies throughout the coastal area Justification: As demonstrated in the 2002 report by the General Accounting Office on North Slope oil and gas activities, state and federal law is inadequate regarding DRR requirements.

### COMMENTS / DISCUSSION:

under 11 AAC 96.010. DNR, Division of Oil and Gas issues a Miscellaneous Land Use Permit for Geophysical Exploration Permits under 11AAC 96.005.

In order to be permitted, this policy must specify from which state standard(s) it flows, and (assuming that it flows from the state Energy standard at 11 AAC 112.230), must specifically designate the areas suitable for siting and approval of the facility using that state standards. If any term within the existing state standards can be supplemented with additional specificity, this would be allowed. The district must also document whether another state or federal law adequately addresses the matter.

The DNR regulation 11 AAC 83.158. states that "an application must include statements and maps or drawings setting out the following (3) plans for rehabilitation of the affected leased or licensed area after completion of operations or phases of those operations;". Interestingly, (4) of the same regulation states, "a description of operating procedures designed to prevent or minimize adverse effects on other natural resources and other uses of the leased or licensed area and adjacent areas, including fish and wildlife habitats, historic and archaeological sites, and public use areas."

POLICY TEXT:	COMMENTS / DISCUSSION:
	See general comments section on Enforceable Policies and comment on proposed policy E-1.
F. Mining and Mineral Processing Policy F-1: Effects of Mining and Mineral Processing Mining and mineral processing activities shall avoid or minimize significant adverse effects to coastal resources and uses, including effects from noise, dust and disposal of mine tailings to extent these activities are not regulated by the Alaska Department of Environmental Conservation. To the extent practicable, mining facilities shall be sited to avoid conflict with competing uses. Measures to minimize or avoid impacts include restrictions to timing of operations, noise control, setbacks and buffers, and erosion control.  Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat.  Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.
Policy F-2: Disposal of Excavation Spoils  To the extent disposal of excavation spoils and mine tailings is not regulated by the Alaska Department of Environmental Conservation, these materials shall not be disposed of in lakes, ponds, and wetlands unless upland disposal sites are not practicable, with consideration of social and environmental effects.  Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence or important habitat.  Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.	Impacts to habitats and subsistence uses are matters adequately addressed though the mitigation sequence under the state standards for 11 AAC 112.300 Habitats and 11 AAC 112.270 Subsistence. Therefore the policy is not permissible. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods. The district policy must include predictability, and may not use unpredictable vague language such as "to the extent not regulated by DEC." The district should simply submit its policies, and DEC can comment in its public review draft whether the proposed policy intrudes upon DEC's regulatory purview.
Policy F-3: Sand and Gravel Excavation Areas This policy establishes a priority for location of sand and gravel mining sites. Applicants must demonstrate, and the borough must approve, that all higher	The word "mining" must be changed to "extraction" to conform to the language in the state standard Sand and Gravel Extraction.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

preference alternatives have been considered and are not practicable, with consideration of environmental and social effects. The following list of sites begins with the most preferable.

- i. Existing, approved upland sand and gravel pits.
- ii. Reuse of sand and gravel from areas where facilities are no longer used.
  - iii. New upland sand and gravel sites.
- iv. Rivers, streams and lakes that do not support fish or critical habitat for biological resources.
  - v. Marine shoreline and offshore sand and gravel sources, and
    - vi. Floodplain sites or from small streams.

Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence or important habitat.

Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.

### Policy F-4: Coastal Sand and Gravel Extraction

When a finding pursuant to Policy F-3 supports sand and gravel mining in coastal waters, intertidal areas, barrier islands and spits, and there is a significant public need for the materials, the applicant shall:

- Avoid significant adverse effects to anadromous fish spawning and rearing habitat and waterfowl habitat,
- Mine from river types in the following order or preference: braided, split channel, meandering, sinuous, and strait, and use exposed large gravel bars in these river types when available,
- iii. Avoid or minimize alterations to channel hydraulics and water diversion,
  - iv. Maintain buffers between active channels and areas to be mined,
    - Avoid in-stream, unnecessary clearing of riparian vegetation and disturbance to natural banks,
- vi. Design configuration of site to blend with natural features and avoiding use of straight, long lines,
- vii. Construct temporary dikes for areas with a potential for inundation from river during mining operations,

### COMMENTS / DISCUSSION: See the OPMP's preliminary comments on the use of the term "with

consideration of environmental and social effects"

The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

### iv. At the completion of mining activities, all disturbed areas will be stabilized, and areas previously vegetated will be re-vegetated with native species, except for areas used for fish enhancement. Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat. Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.

### G. Coastal Development Policy G-1. Priority Use for Coastal Development

- a) To the extent practicable, with consideration of environmental and social effects, activities adjacent to coastal waters shall be compatible with adjacent land and water uses, including subsistence uses. Where a potentially conflicting or incompatible use is proposed, priority shall be given to subsistence uses and maintenance of sensitive habitat.
- b) Where uses or activities would displace subsistence activities or adversely affect important habitat, an applicant must demonstrate to the satisfaction of the borough.
- i. There is a significant public need for the proposed use or activity,
- ii. There are not practicable alternatives, and
   iii. The use will avoid significant effects to subsistence use and important habitat, or the applicant has received approval from the borough for measures

Subject Uses: This policy applies throughout the coastal area for areas

to mitigate the adverse effects.

### COMMENTS / DISCUSSION:

than the director, in his discretion, will require the purchaser of material to rehabilitate the area, and the contract will include special provisions requiring the rehabilitation. These requirements apply to all sites five acres and larger or where 50,000 cubic yards of material is removed or if the operation has a cumulative disturbed area of five or more acres.

While DNR requires rehabilitation, rehabilitation practices vary depending on the size of the site and location. State laws do not prescribe rehabilitation practices; therefore more specific measures are acceptable.

Statutes pertaining to material (sand and gravel) are found at AS 38.05.110-120; AS 38.05.810. The regulations at 11 AAC 71 relate to sale of material rather than methods for extracting.

See the OPMP's preliminary comments on the use of the term "with consideration of environmental and social effects"

As written, policy does not flow from 11 AAC 112.200. It could be tied to 112.200(c) if following changes were made.

In part a), replace "[activities adjacent to coastal waters]" with "the placement of structures in coastal waters"....

The second sentence of part a) and part b) are not permissible because the mitigation sequence in the habitats and subsistence state standards adequately address the matter.

The justification that "The statewide coastal development standard does not address this type of priority use" is an improper justification, as it contravenes the requirement that a district policy must flow from a state standard; if there is no applicable state standard that addresses a given use, then a district policy cannot create one to cover that subject.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

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### viii. Use settling ponds when gravel washing operations occur on a floodplain and recycle wash water.

Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat.

Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.

#### Policy F-5: Offshore Mining

Extraction of sand and gravel or recoverable minerals from offshore areas shall avoid significant adverse impacts to sensitive habitats, subsistence activities, and navigation.

Subject Uses: This policy applies throughout the coastal area for

However, the district could specify what activities are allowed or disallowed in

these areas during the specified time periods.

impacts to habitats and subsistence uses. Therefore the policy is not allowed.

the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34),

and the Habitats standards at 11 AAC 112.300, already adequately protects

The state Subsistence standard at 11 AAC 112.270 through the application of

areac

designated for subsistence and important habitat.

Justification: This policy is necessary because state and federal law does not address this level of specificity. There is no statewide ACMP minerals standard other than for sand and gravel in coastal waters.

#### Policy F-6: Reclamation

Applicants shall reclaim mined areas, including sand and gravel sites and locatable minerals, to the extent practicable, with consideration of environmental and social effects. Reclamation shall include the following practices as applicable:

- Topsoil, if present, shall be segregated from overburden and both stored above the mean annual floodline,
- ii. At the end of each mining operation season, all disturbed areas shall be graded to stable slopes or otherwise stabilized to minimize erosion or blend with the natural topography to avoid entrapment of fish,

Erosion control measures shall be implemented to stabilize the site,

or AS 27.19.030 – 27.19.030 require reclamation of all mining operations, including sand and gravel extraction. 11 AAC 71.265 are the regulations for rehabilitation and intensive management practices which says nothing more

delineated in detail at 11 AAC 112.900. Where impacts cannot be minimized to the maximum extent practicable, then "rehabilitation" is mandatory under that standard. If the district renames this section "Rehabilitation," then to the extent that the policy simply adds specificity to the term as a component in the state mitigation sequencing analysis, the specifics provided here regarding "rehabilitation" would be allowed. The district would also have to document whether the matter is adequately addressed by other state or federal law.

AS 27.19.030 – 27.19.050 require reclamation of all mining operations,

The regulatory "sequencing process to avoid, minimize or mitigate" is

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

designated for subsistence and important habitat and for areas covered by the statewide coastal development standard.

Justification: This policy is necessary because state and federal law does not address this level of specificity. The statewide coastal development standard does not address this type of priority use.

#### Policy G-2: Shoreline Setbacks

Unless a use is water-related or water-dependent, facilities shall be setback a minimum of 100 feet from ordinary high water of coastlines and other water bodies.

Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide coastal development standard.

Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to setbacks.

### Policy G-3: In-Water Uses, Activities and Structures

Activities in fresh or saltwater areas shall not significantly interfere with subsistence activities or jeopardize the availability of subsistence resources or adversely affect other coastal resources and uses. To the extent practicable, with consideration of environmental and social effects, structures and facilities (including bridges, culverts, docks, pipelines, causeways) constructed in or over rivers, streams, lakes, wetlands, tideflats, or marine waters shall be located, designed and constructed to avoid:

i. Interferences with subsistence activities and access to subsistence resources, ii. Adverse effects to the natural characteristics of coastal, marine and intertidal

 Obstructions to fish and wildlife migration, movement, spawning and rearing,

iv. Adverse effects to the direction or velocity of the stream flow or

### COMMENTS / DISCUSSION:

See the OPMP's preliminary comments on the use of the term "with consideration of environmental and social effects"

This policy is permissible, but confusingly written. The Coastal development standard at 11 AAC 112.300(b) requires prioritization of water-dependent uses and activities, to which the first sentence appears to be responsive. But the remainder of the policy appears to flow from 11 AAC 112.300(a), which allows a management scheme for "coastal land or water uses" "that are economically or physically dependent on a coastal location." Recommend segregating the policy into two distinct sections, one accomplishing the mandates of 11 AAC 112.300(a), and one accomplishing 11 AAC 112.300(b). Also, it is not permissible to apply the standard under areas designated for subsistence or important habitats, which should have their own, independent policies and justifications.

The state Subsistence standard at 11 AAC 112.270 through the application of the avoid or minimize sequencing process, as defined at 11 AAC 112.990(34), and the Habitats standards at 11 AAC 112.300, already adequately protects impacts to habitats and subsistence uses. Therefore the policy is not allowed. However, the district could specify what activities are allowed or disallowed in these areas during the specified time periods.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

COMMENTS / DISCUSSION:

#### POLICY TEXT:

#### interfering with the volume, sediment transport, or substrate characteristics of the stream, and

Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered Justification: This policy is necessary because state and federal law does not address this level of specificity. The statewide coastal v. Hazard or obstruction to marine transportation or navigation. by the statewide coastal development standard.

development standard does not address this type of priority use

#### H. Transportation and Utilities

### Policy H-1: Protection of Coastal Resources and Uses

- social and environmental effects, and otherwise minimize adverse effects to: constructed, and operated to avoid, where practicable with consideration of a. Transportation and utility routes and facilities shall be designed, sited,
  - Subsistence resources and their habitats, ii. Natural water flow,
- iii. Native vegetation, and
- Sensitive areas, including marine mammal haulouts and seabird colonies.
- b. Where practicable, with consideration of environmental and social effects, the routes shall be:
- i. Aligned parallel to surface drainage flows,
- ii. Designed to minimize the need to channel water through culverts,
- iv. Constructed during times when critical life stages of coastal species can be iii. Designed to minimize the need for shoreline protection structures, and
- Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered molting periods.

avoided including caribou calving, fish spawning, and bird nesting and

Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to siting and

by the statewide transportation and utilities standards.

utility routes and facilities. Therefore the policy as proposed is not permissible. However, the district could specify what activities are allowed or disallowed in The state standards at 11 AAC 112.240, 11 AAC 112.280, 11 AAC 112.300 sequencing process, as defined at 11 AAC 112.990(34)), already adequately protects coastal resources and uses with respect to transportation routes and and 11 AAC 112.270 (through the application of the avoid or minimize these areas during the specified time periods.

POLICY TEXT:	COMMENTS / DISCUSSION:
operating transportation and utility routes and facilities.	
Policy H-2: Water Crossings  Transportation and utility routes shall avoid crossing waterbodies unless the crossing is necessary to the purpose and function of the facility. To the extent practicable, with consideration of environmental and social effects, crossings shall:  i. Be consolidated at a single location unless consolidation will cause more adverse effects than separate crossings, ii. Be constructed during times when significant number of fish and wildlife are present, especially during critical life stages, iii. Use elevated, open pile or pier structures or use adequately sized and placed culverts to maintain natural water flow and movement of fish and wildlife, and iv. Avoid damming of rivers by ice bridges in areas used by over-wintering fish.  Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards.  Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to siting and operating transportation and utility routes and facilities.	See response to proposed Policy H-1.
Policy H-3: Port Facilities  New port facilities and shipping routes shall be located, designed and constructed to avoid, or minimize when avoidance is not practicable, disturbance to coastal resources and uses including subsistence.  Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards.  Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to siting and operating of ports and shipping routes.	See response to proposed Policy H-1.

POLICY TEXT:	COMMENTS / DISCUSSION:
Policy H-4: Airstrips  New airstrips shall be designed, located and constructed to avoid, or minimize when avoidance is not practicable, physical, visual and acoustical disturbances to subsistence uses, habitat and coastal species.  Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards.  Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to siting of new airstrips.	See response to proposed Policy H-1.
Policy H-5: Off-Road Travel Off-road travel shall avoid disturbance to vegetation and permafrost areas. Measures to avoid disturbance include timing of activities to occur when the ground is adequately frozen or has adequate snow cover or by use of vehicles that will not leave permanent damage to the tundra. Subject Uses: This policy applies throughout the coastal area for areas designated for subsistence and important habitat and for areas covered by the statewide transportation and utilities standards.  Justification: This policy is necessary because state and federal law does not address this level of specificity in regard to damage from offroad travel.	See response to proposed Policy H-1.  Alternatively, the policy could be written to apply specifically to disallow ORV use in designated areas. The specific times of the year when ORV use is disallowed must be included, so the policy is precise and prescriptive.
3.6 Definitions  The definitions in this section apply throughout the NSB CMP, unless an alternative or contrary meaning is expressly provided. Any word or term not defined below or otherwise defined herein shall be used as it is defined in AS §	An enforceable policy may not duplicate, restate, or incorporate by reference statutes or administrative regulations adopted by state or federal agencies. As such, the district may not define terms in its plan that are already defined in the ACMP statue and regulations, such as

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

### 46.40.210, 11 AAC 110.990, 11 AAC 112.990 or 11 AAC 114.990. Any terms not defined in this section or in the ACMP regulations has the meaning of common or standard usage. The following terms are defined below.

- "avoid" means a process of preventing adverse impacts to the maximum extent practicable.
  - 2) "active floodplain" means an area that shows evidence of periodic inundation by water, such as a lack of vegetation.
- 3) "applicant" means the person who submits an application for a consistency review, and that person's successors in title or interest.
  - 4) "beach" means an area affected by wave action directly from the sea.
    - 5) "borough" means the North Slope Borough.
- "business day" means any calendar day, Monday through Friday, exclusive of holidays.
- 7) "coastal area" has the meaning given "coastal zone" in AS 46.40.210 except that "coastal area" includes federally owned land and water within the coastal
- 8) "coastal water" means those waters, adjacent to shorelines, that contain a measurable quantity or percentage of sea water, including sounds, bays, lagoons, ponds, estuaries, and tidally influenced waters.
- 9) "commercial use" means use involving the storing, wholesaling, retailing, manufacturing or rental of any article, service or substance for cash, trade or any form of compensation, and supporting activities, but excludes such uses when they are conducted in a dwelling unit or accessory building to a dwelling unit and such uses are clearly subordinate to the primary use of the dwelling for residential purposes;
- 10) "commercial recreational use" means use involving the commercial provision of services including overland, air, or water travel, in support of any of the following: hiking, fishing, hunting, sightseeing, or similar activities. The term includes the activities of guides, transporters, outfitters and commercial air charters for recreational purposes.
- 11) "consistency recommendation" means the formal comment by the NSB as to whether a proposed use is consistent with the standards of the Alaska Coastal Management Program including the applicable policies of NSB CMP, which is

### COMMENTS / DISCUSSION:

proposed NSB definition #7, "coastal area," (defined at 11 AAC 112.900(5)); other state law, such as NSB definition #19, "hazardous substances," (defined at AS 18.60.105(9)), or federal law, such as definition #8, "coastal waters," (defined 16 USC 1453(3)). The district must carefully analyze each proposed definition, striking any that repeat, restate, or incorporate by reference terms defined in state or federal law.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

### COMMENTS / DISCUSSION:

submitted by the borough to the coordinating state agency.

12) "coordinating agency" is the party responsible for making or concurring in a consistency determination. When a proposed use is a federal action or requires an applicable federal or state permit, a state agency will be designated the coordinating agency.

13) "dismantlement, restoration and rehabilitation" means efforts to return a disturbed site to its pre-project conditions with respect to habitat functions.

14) "estuary" means a semi-enclosed coastal body of water that has a free connection with the sea and within which seawater is measurably diluted with freshwater derived from land drainage or glacial melt.

15) "estuarine waters" means waters associated with an estuary.

16) "existing use" means the use or uses made of a site as of the date of enactment into Alaska law of this revised CMP.

17) "federal consistency determination" refers to the determination by a federal agency under 15 C.F.R. 930.36 that an activity proposed by the federal agency is consistent to the maximum extent possible with the enforceable policies of the ACMP.

18) "habitat" means areas used by fish, wildlife or plants including, air, water and land.

19) "hazardous substances," "hazardous materials" and "toxic substances" means an element or compound which, when it enters into or upon the water or subsurface land of the state, presents an imminent and substantial danger to the public welfare or health or to the fish, wildlife, vegetation, or any part of the natural habitat in which they are found, and includes, but is not limited to: poisons, pesticides, acids, caustics, infectious or pathological wastes, chemical

oil refuse, or any petroleum-related product or byproduct).

20) "important habitat" means areas designated by state agencies under provisions in 11 AAC 112.300(b)(9) or by coastal districts under 11 AAC

derivative of a liquid hydrocarbon including crude oil, lubricating oil, sludge,

toilet wastes, radioactive materials, solvents, toxic heavy metals, and oil (a

21) "land" includes submerged land, wetlands, uplands, and interests therein, unless specifically excluded.

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

### COMMENTS / DISCUSSION:

- 22) "local government" means any borough, city or tribal government.
  23) "major facility" or "major project" means a large-scale development activity that has the potential to significantly impact coastal resources.
  - 24) "material" means (non-negligible), definite, and demonstrable.
- 25) "minimize", "minimizing", and "minimized" mean to limit or reduce adverse impacts to the smallest amount, extent, duration, size, or degree by selecting the option which uses the most effective method of doing so without violating sound engineering practices or causing other adverse environmental impacts, social costs, or economic costs of unreasonable magnitude in light of the benefit to be gained.
  - 26) "mitigate" means onsite or offsite rehabilitation or restoration of adverse project impacts to a coastal use or resource.
- 27) "natural hazards" means the following natural processes or adverse conditions that present a threat to life or property in the coastal area: flooding, earthquakes, active faults, tsunamis, landslides, volcanoes, storm surges, ice formations, snow avalanches, erosion, and beach processes.
- 28) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation, or other distinctive physical characteristics.
- 29) "permit" means a permit, lease, authorization, license, approval, or any other authorization necessary for the completion of a project or a discrete phase of a project.
- 30) "person" means, without limit, any natural person, corporation, partnership, organization or association, whether incorporated or otherwise, whatsoever.
  - 31) "petroleum" and "petroleum products" mean the same as the definition of "petroleum" found at AS § 46.03.450.
    - 32) "plan" or "this plan" means the NSB coastal management plan.
      33) "practicable" means feasible in light of overall project purposes after considering cost, existing technology, and logistics of compliance with the

standard

Reviewer Sara Hunt Agency/Department DNR/OPMP Phone 465-8788 Email Sara\_Hunt@dnr.state.ak.us Date: May 11, 2005

#### POLICY TEXT:

### COMMENTS / DISCUSSION:

- 34) "public need" means a documented need of the general public and not that of a private person. When determining whether there is a material need of the a) improves the delivery of water, sewer, health or other community services; among others, that may apply to particular circumstances whether the use: general public, the NSB shall specifically consider the following factors,
  - - b) provides or materially contributes to lower-cost fuel or power;
      - c) provides local employment;
- d) is related to or supports Alutiq culture and values; and
- e) generates local government revenues greater than the demand for local government expenditures by the use.
- 35) "reasonably foreseeable" means a fact-specific determination of whether something can reasonably be foreseen; "reasonably foreseeable" does not include remote or speculative consequences.
- relaxation, amusement, or refreshment of mind or body, as distinguished from construction, but may include temporary construction, such as tent platforms subsistence or commercial recreational uses. It does not include permanent 36) "recreational use" means a use undertaken primarily for pleasure, and lean-tos.
- 37) "residential use" means a use involving the occupation of a building or structure for living, cooking, sleeping, and accessory uses other than on a temporary basis.
- 38) "resource extraction" means a use involving the removal for commercial rock, petroleum, natural gas, coal, metal ore, or any other mineral, and other purposes of native vegetation (including timber), topsoil, fill, sand, gravel, operations having similar characteristics.
- disturbance of the resource to be protected by the policy or, to disturb or cause a material negative alteration to the ability of a person to engage in the use to 39) "significant adverse impacts" means a material negative alteration or be protected by the policy.
  - enforceable policies of the Alaska Coastal Management Program including the 40) "state consistency determination" means the formal determination by the coordinating state agency of whether a proposed use is consistent with the statewide standards and district enforceable policies

POLICY TEXT:	COMMENTS / DISCUSSION:
41) "structure" means anything constructed by humans which is placed, constructed, erected or located on or under the ground, or attached to something fixed to the ground, such as a floating structure anchored to submerged ground, regardless of size, purpose or whether it is temporary or permanent, including:  a) A building; b) A tower, antenna, pole or similar structure; c) Drilling or excavating apparatus, pipelines, pump stations, conveyor belt and	
similar structures, but not including lightweight, non-permanent apparatus or construction equipment; d) A foundation, or gravel pad;	
e) A street, road, ice road, ice pad, parking area, or storage area. 42) "temporary use" means use of less than 30 consecutive days. 43) "toxic substances" means the same as "hazardous substances", above. 44) "transitional and intertidal areas" means areas subject to periodic or	
occasional inundation by tides, including coastal floodplains, storm surge areas, tsunami and hurricane zones, and washover channels.  45) "use" means any development or other activity on a parcel of land.	

Subject: EIS scoping comments on the ACMP

From: Teri Camery <Teri\_Camery@ci.juneau.ak.us>

Date: Tue, 26 Jul 2005 15:59:31 -0800

To: "john.king@noaa.gov" <john.king@noaa.gov>, "'helen.bass@noaa.gov'" <helen.bass@noaa.gov>

CC: Dale Pernula \( \text{Dale\_Pernula@ci.juneau.ak.us} \), \( \text{Peter Freer \( \text{Peter\_Freer@ci.juneau.ak.us}} \), \( 'Glenn \( \text{Gray \( \text{glenn@glenngray.net}} \) \)

<glenn@glenngray.net>

Hello Mr. King and Ms. Bass,

Attached in pdf are our EIS scoping comments on the proposed changes to the Alaska Coastal Management Program. Please contact me at the number below if you have any questions.

Sincerely, Teri Camery

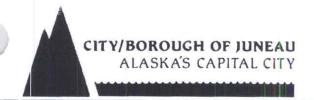
Teri Camery, Planner, Coastal District Coordinator CBJ Community Development Department 155 S. Seward Juneau, AK 99801 teri\_camery@ci.juneau.ak.us (907) 586-0755 (907) 586-3365 fax

OCRM scoping comments 7-26-05.PDF

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Content-Encoding: base64



July 26, 2005

John King, Responsible Program Manager OCRM Coastal Program Division National Ocean Service SSMC4 Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Also via email: john.king@noaa.gov

Subject: Alaska Coastal Management Program EIS Scoping Comments

Dear Mr. King:

The purpose of this letter is to comment on the State of Alaska's application to the National Oceanic and Atmospheric Administration (NOAA) Office of Coastal Resource Management (OCRM) for amendment to the Alaska Coastal Management Program.

The City and Borough of Juneau opposed the passage of HB 191 in 2003 based on our belief that the legislation undermined a cornerstone of the program, that is, the due deference given to local districts (i.e. municipal governments and CRSA's) based on the enforceable policies of district plans. The basic architecture of the program gave local governments "a seat at the table" and a measure of local control regarding the conditions under which coastal development was allowed. Statutory amendments to the program, and the subsequent revised regulations and guidance have, in our opinion, significantly reduced these features of the program, and will have significant effects on coastal uses and resources.

Our effort in these scoping comments is to address the major themes of the revision and to highlight specific effects on the Juneau Coastal Management Program. We have voiced these concerns many times before to both OCRM and the State of Alaska. We have provided only a brief summary of these concerns here. A listing of our concerns contains at least the following:

**Public Interest.** Concentration of coastal decision making power into a single agency, the Department of Natural Resources, removes the "checks and balances" in the original ACMP that helped to balance the public interest. Specifically, elimination of the Coastal Policy Council (CPC) has reduced the opportunity for coastal districts and state agencies, other than DNR, to influence coastal decision making. The legislature created the CPC in 1978 and gave the coastal district representatives a majority of seats on the council expressly to provide for this balancing.

Regulatory Complications. DNR guidance for developing local enforceable policies has been confusing. The use of terms such as "flow from," "adequately address," and "avoid, minimize or mitigate" are difficult to understand, notwithstanding that the intent of the revisions to the program was to eliminate vague language. The revised ACMP regulations are not written in plain language, and they are confusing and difficult to understand. DNR's interpretation of the regulations has been confusing as well, especially with regard to acceptable enforceable policies. Additionally, the state is encouraging districts

John King, Responsible Program Manager ACMP EIS Scoping Comments July 26, 2005 Page 2 of 2

to replace enforceable policies with the powers exercised under their Title 29 and/or Home Rule powers. This will result in an added layer of review for applicants, the potential for conflicting requirements, and the potential for delays in project approvals.

**Public Process.** The regulations process lacked meaningful opportunities for public involvement or the involvement of the districts. The district/state team assembled for the initial revision to the regulations never discussed the content of the regulations. The policy direction from DNR regarding acceptable enforceable policies has been a moving target. The current interpretation of acceptable enforceable policies is much different than what DNR told the legislature during testimony on HB 191 in 2003. The proposed changes reduce public participation by eliminating many projects from ACMP reviews (by separating DEC review, reducing local enforceable policies, and expanding the A and B exemption lists), removing provisions for citizen lawsuits, and providing only minimum public noticing.

Effects on the JCMP. Contrary to assertions made by the state during the hearings on HB 191, CBJ will lose the Juneau Wetlands Management Plan (JWMP), since state standards and the revised regulations (and their interpretation) does not allow local policies to use the terms "avoid, minimize, or mitigate." A wetlands plan cannot be implemented through the program without these terms. The JWMP, adopted in 1992, is based on ten years of scientific research and offers specific management protocols designed to minimize impact on high value wetlands and promote development on low value wetlands through an expedited process. This plan was developed to provide a more predictable and prescriptive permit process than the Corps of Engineers offered, which is what the state promoted in the ACMP changes.

Keeping the JWMP in our local land use plan is not a substitute for the due deference of the ACMP, since we lose a value, programmatic link to Corps of Engineers permitting. Besides the JWMP, CBJ will lose many other valuable policies on issues such as streamside setbacks, coastal development, and seafood processing. DNR's excessively narrow regulations (and subsequent interpretations) exceed the intent of HB 191, where legislators were promised that districts would retain a meaningful role based on a broad interpretation of enforceable policies. In our view, the state has failed to address the concerns of the districts, with the result that meaningful district participation in the program is seriously eroded. Likewise, the ability of districts to provide for resource protection, where this is important to local residents, is compromised, and our ability to work cooperatively with local developers to identify appropriate local solutions has been hampered.

Thank you for this opportunity to comment.

Sincerely

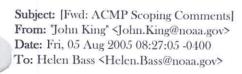
Dale Pernula, Director

Community Development Department

(907) 586-0757

E-mail: Dale Pernula@ci.juneau.ak.us

Cc: Honorable Bruce Botelho, Mayor Rod Swope, City and Borough Manager



FYI

August 5, 2005

John King Responsible Program Manager Coastal Program Division, OCRM National Ocean Service, SSMC4, Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Dear John:

I am submitting these comments for the scoping process for the EIS for the  ${\tt ACMP}$ 

that OCRM will be completing. You agency will have a difficult task quantif

the effects of the changes to the ACMP, because these changes are extremely complex. As far as I can tell, the Office of Project Management and Permitting

(OPMP) is as confused about these changes as Alaska's coastal districts. In

fact, due to the complexity of the changes, OPMP staff have been unable to answer many of the questions I have posed to them.

Effect of ACMP Changes on Other Coastal Programs

Perhaps the most important consideration in the EIS should be the effect th at

the ACMP changes will have in setting a precedent for other coastal program s.

If OCRM approves these changes, it must also consider the possibility that other states will follow suit and weaken their programs as well. Thus, these

changes could have a profound impact to coastal resources and uses throughout the country.

Lack of State Laws

Because Alaska does not have the same kinds of environmental legislation as other coastal states, the changes will significantly affect its coastal use

and resources. Alaska does not have a shoreline protection act, growth management laws or "little NEPA" legislation. The EIS should include an analysis of what gaps will occur as a result of these changes. For example, the

habitat standard has been an important method to reduce impacts to habitat throughout the years. The Office of Habitat Management and Permitting has only

two simple statutes (and no corresponding regulations). Without effective 1 aws

to protect coastal resources and uses, there will be significant gaps in managing coastal resources and uses if these changes to the ACMP are approved.

Removal of Air and Water Quality

One of the most troubling changes to the ACMP is the removal of matters regulated by the Alaska Department of Environmental Conservation (DEC) from the

ACMP consistency reviews. Removing air and water quality from ACMP reviews will

make a mockery of the consistency review process. It is impossible to revie  $\ensuremath{\mathbf{w}}$ 

the impacts to other coastal resources if one is not allowed to discuss impacts

to air and water quality.

Although the issuance of DEC permits will constitute an ACMP finding, matters

regulated by DEC will no longer be reviewed against other statewide standards

or district enforceable policies. As a result, the removal of DEC will have significant impacts to coastal resources and uses.

Projects Outside the Coastal Zone

Under the new changes, projects outside the coastal zone will no longer be reviewed for consistency with the ACMP even if they have significant impacts to

coastal resources and uses. Regardless of recent changes to ACMP regulation s,

the statutory changes in 2003 prevent the state from reviewing projects inl and

of the coastal zone boundary even if there are federal permits or federal activities involved. This change is especially important for major projects that occur just outside the coastal boundary. The potential impacts of this change should be quantified in the EIS.

#### Enforceable Policies

The apparent intent of the state is to eliminate the ability of coastal districts to establish effective enforceable policies. I don't know anyon e in

the state that understands the complex interpretation of the regulations by the

state. The state has provided few examples of acceptable enforceable policies,

and OPMP staff have been unable to clearly explain exactly what policies wi

be approvable. This change to the ACMP will likely have a great impact to coastal resources and uses, and the EIS should include an explanation of the  $\epsilon$ 

limitations on district enforceable policies that an average person can understand.

#### Statewide Standards

The changes have significantly watered down the statewide standards. The  ${\mbox{EI}}$  S

should include an in-depth comparison of the former and new statewide stand ards

and include an analysis of the impacts of the weakened standards on coastal resources and uses. Of great concern are changes to the subsistence standard,

the habitats standard, and the mining standard, but all changes to the standards should be addressed in the  ${\tt EIS}$ .

#### Coastal Policy Council

The elimination of the Coastal Policy Council (CPC) should be addressed in the

EIS. The CPC has been an active body in setting coastal policies, and elimination of this body will reduce the ability of coastal districts to participate in the ACMP.

#### Reduced Local Control

One of the cornerstones of the original ACMP was the involvement of coastal districts. The changes to the ability of coastal districts to establish enforceable policies, the elimination of the CPC, and the removal of coasta

1

district representation from the ACMP working group will disenfranchise coastal

districts. If coastal districts are no longer engaged in coastal management, coastal resources will suffer.

OCS Oil and Gas

Changes to the ACMP appear to remove any ability for public involvement, including coastal districts, in the review of air and water quality aspects of

Outer Continental Shelf (OCS) oil and gas projects. Because DEC does not have a

permit and the state claims that districts may not have any air or water qu ality

policies, there is no avenue for input into this important matter. An oil spill

is the major concern of offshore oil and gas projects, and the consistency review will lose most of its meaning if districts and the public cannot add ress

this important matter. I raised this issue at several teleconferences, but  $\ensuremath{\mathsf{DNR}}$ 

has never explained just how projects in the OCS will be reviewed for consistency.

Public Participation

The changes to the ACMP will reduce public involvement in projects. First, addition of more projects to the "A" and "B" lists will remove thes e projects

from any oversight, including public review and comment. Second, the legislation removed the ability of citizens to initiate law suits on ACMP consistency determinations. Without the threat of a law suit, the state has no

incentive to involve the public. Third, the Governor's office has sent out at

least two directives to agency staff to only do the minimum public noticing that is legally required. Considering that many Department of Natural Resource

permits have no public notice requirements, provisions for public participation

will be severely reduced.

These brief comments highlight some of the most important considerations that

should be addressed in the EIS. There are many more changes, and the EIS should

evaluate the cumulative impact of all the changes.

While I appreciate that OCRM is concerned that Alaska may drop out of coast al

management, at some point an ineffective program is worse than no program a  $\boldsymbol{t}$ 

all. I hope that OCRM will do a thorough analysis of the changes to the ACM P to

determine to what extent the new program will be effective.

 $\ensuremath{\mathbf{I}}$  am available to provide additional clarification to these comments, and  $\ensuremath{\mathbf{I}}$  may

be reached by email or by calling 907-789-7822.

Sincerely,

Glenn Gray

Subject: AOGA Comments Re: OCRM EIS From: Kara Moriarty <moriarty@aoga.org> Date: Fri, 05 Aug 2005 11:18:41 -0800

To: John.King@noaa.gov

Mr. King:

Attached are the comments from the Alaska Oil and Gas Association (AOGA) regarding the EIS for the State of Alaska ACMP amendments. Please confirm that you received this email and attached comments.

Thank you.

Kara Moriarty Alaska Oil & Gas Association 121 W. Fireweed Lane, #207 Anchorage, AK 99503 (907)272-1481 Fax: (907)279-8114 moriarty@aoga.org

AOGA Written Comments on OCRM EIS 080505.doc

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# Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207 Anchorage, Alaska 99503-2035 Phone: (907) 272-1481 Fax: (907) 279-8114

Email: brady@aoga.org

Judith Brady, Executive Director

August 5, 2005

Mr. John R. King
Responsible Program Officer - Coastal Programs Division
Office of Ocean and Coastal Resource Management - National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

RE: Environmental Impact Statement (EIS) for the Proposed Approval of Amendments to the Alaska Coastal Management Program

Dear Mr. King:

AOGA is pleased to have this opportunity to provide comments to the Office of Ocean and Coastal Resource Management on the scope of the Alaska Coastal Management Program Amendments Environmental Impact Statement. AOGA is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

AOGA believes that the mandate of OCRM in this EIS process is (1) to verify that the ACMP amendments comply with the requirements of the CZMA (as the OCRM's preliminary approval indicates) and (2) to assess the environmental, social and socioeconomic effects of the amendments with respect to coastal resources and uses.

When the Alaska Coastal Management Act (ACMA) was passed by the Alaska legislature in 1977 (the year the Clean Water Act was amended by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations for a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities

is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

The level of environmental protection of coastal resources has not changed as a result of HB 191 and AOGA supported these changes for many reasons. Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Most importantly, HB 191 recognized the significant evolution of environmental protection provided by these federal and state regulatory programs since the inception of the ACMP and substantial duplication, complexity and uncertainty were removed to ensure timely issuance of permits. In particular, it made Alaska Department of Environmental Conservation (ADEC) permits and authorizations automatically consistent upon issuance.

The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. Attached to this letter is a list of environmental laws and regulations at the federal and state levels which typically apply to oil and gas activities in Alaska's coastal zone. AOGA encourages OCRM to conduct a "gap" analysis as part of the EIS process to identify those coastal resources and uses managed by these laws and regulations and what is protected or managed by the statewide standards. We expect that such an analysis would support the points made in this letter.

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

A concern has been expressed by some Alaska Coastal Districts that the narrowed focus of enforceable policies contained in the ACMP amendments reduces the district's involvement in decisions regarding coastal development. There are no changes in the ACMP amendments that affect the core of the consistency review process and local involvement.

HB 191 and its implementing regulations establish bright lines for the scope and applicability of consistency reviews and this refocus of the ACMP fully complies with the program management mandates of 15 CFR Part 923 Subpart E which allows states to adopt one or a combination of techniques to manage coastal resources. The state has elected to continue the combination of Techniques A (local implementation) and B (state regulation of coastal land and water uses) adopted in the originally approved program but to modify this balance through narrowing the focus to matters of local concern (Technique A) and broad application statewide standards (Technique B). Under the CZMA, a state program based solely on management technique B would also be approvable. However, Alaska recognized the importance of local involvement given

the diverse geography and population of the state. This delegation of authority to local districts is purely voluntary on the state's part with respect to the mandates of the CZMA. In addition, many of the regulatory programs on the attached list have their own processes for public comment and consultation in addition to the permit reviews under the ACMP umbrella. Most of the permits and authorizations under the ADEC "carve out" have their own public comment processes and administrative procedures to challenge the agency's decisions. Another significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured though legislation an extension of time to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. Further, with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons discussed in this letter, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards. Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.

JUDITH BRADY Executive Director

Wolth Brown

Mr. Tom Irwin, Commissioner of Natural Resources, State of Alaska

Mr. Bill Jeffress, Director, OPMP

Cc:

Mr. Randy Bates, Deputy Director, OPMP

## Attachment 1

# List of Environmental Laws and Regulations Related to Alaska Oil and Gas Development

## **Federal**

National Environmental Policy Act (NEPA)

Scope

Environmental/social impacts of

whole project

Clean Water Act

U.S. Army Corps of Engineers Sec. 404/10

Construction in wetlands and navigable waters

Clean Water Act National Pollutant Discharge Waste water and storm water

Elimination System (Sec. 402)

Discharges

Endangered Species Act Sec. 7 Consultation

(USFWS, NMFS)

Endangered and threatened

species

Marine Mammal Protection Act Letter of Authorization, Incidental Harassment

Authorization (NMFS, USFWS)

Marine mammal takes

Bureau of Land Management Oil and Gas

Permitting (NPRA) and Lease Conditions<sup>1</sup>

Bureau of Land Management Pipeline Right-of-Way<sup>2</sup>

Exploration and development

Outer Continental Shelf Lands Act

Minerals Management Service (MMS)

Pipeline construction and operations

OCS exploration, development and production

Oil Pollution Act of 1990

Oil spill contingency plan requirements

Executive Order 12989 Environmental Justice Consideration of effects on minorities of federal

actions

<sup>2</sup> ditto

Federal lands excluded from coastal zone

Executive Order 13175 Consultation With Tribes

Consultation with tribes on federal actions (e.g. permit reviews)

National Historic Preservation Act

Protection of historic and cultural resources

Resource Conservation and Recovery Act (EPA)

Handling, transport and disposal of hazardous wastes

Underground Injection Control Program/ Safe Drinking Water Act (EPA)

Class I disposal wells

Spill Prevention, Control and Countermeasures Plan (EPA)

Regulation of oil containers (tanks etc.)

# Federally-delegated (State of Alaska)

Clean Air Act New Source Review/ Prevention of Significant Deterioration (Alaska Department of Environmental Conservation)

Construction permits air emissions

Clean Air Act Title V (Alaska Department of Environmental Conservation)

Operating permits air emissions

Underground Injection Control Program/ Safe Drinking Water Act (Alaska Oil Conservation Commission)

Class II EOR and disposal wells

Coastal Zone Management Act/Alaska Coastal Management Program (DNR/OPMP)

Coastal zone consistency

# State of Alaska

Alaska Department of Environmental Conservation Solid Waste Management

Solid waste facility permits (e.g. grind and inject)

Alaska Department of Environmental Conservation

Oil Discharge Prevention and Contingency Plan

Alaska Department of Environmental Conservation

Permit to Construct (waste water disposal/drinking water system)

Alaska Department of Environmental Waste water disposal permit

Alaska Department of Environmental Conservation Sec. 401 Water Quality Certification

Alaska Department of Natural Resources Pipeline Right-of-Way Leasing

Alaska Department of Natural Resources Unit Plan of Development

Alaska Department of Natural Resources Lease Plan and Unit Plan of Operations

Alaska Department of Natural Resources Miscellaneous Land Use

Alaska Department of Natural Resources Material Sales Contract

Alaska Department of Natural Resources Temporary Water Use and Water Rights

Alaska Department of Natural Resources Title 41 Fish Habitat

Alaska Oil and Gas Conservation Permits to Drill

State Historic Preservation Office

NPDES Application and Class I Disposal Well

Certification of Clean Water Sec. 402 (NPDES) and 404 permits

Common carrier pipelines

Description of proposed activities With Unit Agreement

Description of exploration or development activities on state leases

Permits for activities on state (e.g. tundra travel, surveys, ice roads)

Gravel extraction on state lands (Mining and Rehabilitation Plan)

Permits for water use (consumptive and non-consumptive)

Permits for activities in fish streams

Permits for exploration and development wells

Protection of historical and archeological resources (clearance surveys)

Subject: [Fwd: ACMP Program]

From: "John King" < John.King@noaa.gov>
Date: Fri, 05 Aug 2005 14:33:55 -0400
To: Helen Bass < Helen.Bass@noaa.gov>

----- Original Message -----Subject: ACMP Program
Date: Fri, 5 Aug 2005 11:09:23 -0700 (PDT)
From: helen mitchell <a href="mailto:sasailuk54@yahoo.com">sasailuk54@yahoo.com</a>
To: John. King@noaa.gov

John King Office of Ocean and Coastal Resource Management NOAA

Dear Mr. King:

The City of Shungnak submits these brief comments on the scope of the environmental impact statement for the Alaska Coastal Management Program (ACMP) changes.

The changes to the ACMP are complex, and they can be expected to have significant impacts to subsistence and othe coastal resources. The EIS should address the effects of removing air and water quality issues from the ACMP reviews, elimination of the state mining standard, and elimination of reviews of projects inland of the coastal zone. For example, there are a least two large mines near our community that may be developed in the near future. These mines are located just outside of the coastal zone. While mining projects can have economic impacts for our community, they also may have significant impacts on subsistence uses.

We hope the EIS process will include meaningful involvement of both Alaska communities and tribal organizations.

Sincerely,

Helen Mitchell City of Shungnak

Start your day with Yahoo! - make it your home page

Subject: [Fwd: ACMP Program]
From: "John King" < John.King@noaa.gov>

Date: Fri, 05 Aug 2005 14:33:55 -0400 To: Helen Bass <a href="mailto:Helen.Bass@noaa.gov">Helen.Bass@noaa.gov</a>>

Original Message
Subject: ACMP Program
Date: Fri, 5 Aug 2005 11:09:23 -0700 (PDT)
From: helen mitchell <a href="mailto:sasailuk54@vahoo.com">sasailuk54@vahoo.com</a>
To: John. King@noaa.gov

John King Office of Ocean and Coastal Resource Management NOAA

Dear Mr. King:

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We hope the EIS process will include meaningful involvement of both Alaska communities and tribal organizations.

Sincerely,

Helen Mitchell City of Shungnak

Start your day with Yahoo! - make it your home page

Subject: AOGA Comments Re: OCRM EIS From: Kara Moriarty <moriarty@aoga.org> Date: Fri, 05 Aug 2005 11:18:41 -0800

To: John.King@noaa.gov

CC: Bill Jeffress <william\_jeffress@dnr.state.ak.us>, Randy Bates <Randy\_Bates@dnr.state.ak.us>, helen.bass@noaa.gov, tom\_irwin@dnr.state.ak.us, moriarty@aoga.org, "Judy Brady" <brady@aoga.org>, "Marilyn Crockett" <crockett@aoga.org>, "Tamara Sheffield" <sheffield@aoga.org>

Mr. King:

Attached are the comments from the Alaska Oil and Gas Association (AOGA) regarding the EIS for the State of Alaska ACMP amendments. Please confirm that you received this email and attached comments.

Thank you.

Kara Moriarty Alaska Oil & Gas Association 121 W. Fireweed Lane, #207 Anchorage, AK 99503 (907)272-1481 Fax: (907)279-8114 moriarty@aoga.org

AOGA Written Comments on OCRM EIS 080505.doc

Content-Type: appl

application/msword

Content-Encoding: base64

# Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207 Anchorage, Alaska 99503-2035 Phone: (907) 272-1481 Fax: (907) 279-8114

Email: brady@aoga.org
Judith Brady, Executive Director

August 5, 2005

Mr. John R. King
Responsible Program Officer - Coastal Programs Division
Office of Ocean and Coastal Resource Management - National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

RE: Environmental Impact Statement (EIS) for the Proposed Approval of Amendments to the Alaska Coastal Management Program

Dear Mr. King:

AOGA is pleased to have this opportunity to provide comments to the Office of Ocean and Coastal Resource Management on the scope of the Alaska Coastal Management Program Amendments Environmental Impact Statement. AOGA is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

AOGA believes that the mandate of OCRM in this EIS process is (1) to verify that the ACMP amendments comply with the requirements of the CZMA (as the OCRM's preliminary approval indicates) and (2) to assess the environmental, social and socioeconomic effects of the amendments with respect to coastal resources and uses.

When the Alaska Coastal Management Act (ACMA) was passed by the Alaska legislature in 1977 (the year the Clean Water Act was amended by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations for a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities

is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

The level of environmental protection of coastal resources has not changed as a result of HB 191 and AOGA supported these changes for many reasons. Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Most importantly, HB 191 recognized the significant evolution of environmental protection provided by these federal and state regulatory programs since the inception of the ACMP and substantial duplication, complexity and uncertainty were removed to ensure timely issuance of permits. In particular, it made Alaska Department of Environmental Conservation (ADEC) permits and authorizations automatically consistent upon issuance.

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A concern has been expressed by some Alaska Coastal Districts that the narrowed focus of enforceable policies contained in the ACMP amendments reduces the district's involvement in decisions regarding coastal development. There are no changes in the ACMP amendments that affect the core of the consistency review process and local involvement.

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JUDITH BRADY Executive Director

Wolith Grow

Mr. Tom Irwin, Commissioner of Natural Resources, State of Alaska

Mr. Bill Jeffress, Director, OPMP

Cc:

Mr. Randy Bates, Deputy Director, OPMP

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Coastal Zone Management Act/Alaska Coastal Management Program (DNR/OPMP) Coastal zone consistency

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Permits for activities in fish streams

Permits for exploration and development wells

Protection of historical and archeological resources (clearance surveys)

Subject: [Fwd: [Fwd: Scoping comments ACMP]] From: "Gregory Bass" <Gregory.Bass@noaa.gov>

Date: Fri, 05 Aug 2005 17:06:29 -0400 To: Helen Bass <Helen.Bass@noaa.gov>

Misrouted to me.

Greg Bass, NMAOx1, 301-713-3425 x179

Original Message ———

Subject: [Fwd: Scoping comments ACMP] Date: Fri, 05 Aug 2005 15:34:58 -0400 From: "John King" \John.King@noaa.gov>

Organization: NOAA/Office of Ocean & Coastal Resource Management

To: "Helen Bass <Helen.Bass@noaa.gov> >> Gregory Bass" <Gregory.Bass@noaa.gov>

----- Original Message -----

Subject: Scoping comments ACMP Date: Fri, 05 Aug 2005 11:17:11 -0800 From: Sandy Harbanuk <sandyharb@ak.net> To: John.King@noaa.gov, helen.bass@noaa.gov

Dear Mr King and Ms Bass:

I have attached scoping comments for the proposed amendment to the Alaska Coastal Management Program. Please feel free to contact me with any questions.

Thank you.

Sandy Harbanuk Juneau, Alaska

NEPA scoping comments.doc

Content-Type:

application/msword

Content-Encoding: base64

John King Responsible Program Manager Coastal Program Division, OCRM National Ocean Service, SSMC4, Room 11305 1305 East-West Highway Silver Spring, MD 20910-3281

Dear Mr. King:

Please accept my comments concerning the proposed amendment to the Alaska Coastal Management Program (ACMP) as part of the scoping process under NEPA.

The schedule for the EIS process is insufficient to allow a full and fair examination of the effects of the changes to the ACMP. In the history of the CZMA, no other coastal program in the United States has undergone such an extensive overhaul, with disintegration of program elements and divestment of important protections for coastal uses and resources.

The development of the regulations by the Alaska Department of Natural Resources (DNR) to implement the currently proposed ACMP was similarly rushed, with many of the implications of the regulations only realized by the department itself after the regulations had been set in place. Some of these realizations resulted in late-breaking changes in the regulations; most were simply shrugged off as unfortunate additional restrictions on coastal communities' participation or local control. In many instances DNR and the Alaska Department of Law have been unable to clarify the meaning of the regulations, to recognize unintended ramifications of the regulations or to give clear guidance to coastal districts regarding implementation. Thus workshops and teleconferences have been conducted in a by-the-seat-of-the-pants fashion, with answers to coastal districts' questions left dangling and a lack of a clear idea of what's included or required by the proposed ACMP amendment. This confusion can only be worse for project applicants.

Previous changes to the ACMP have been undertaken with a sincere intention to improve, rather than dismantle, the program. These previous changes included strong public participation with representation from around the state on the Coastal Policy Council, which has been abolished. Throughout the current process, DNR has repeatedly encouraged coastal districts to do minimal work to develop their plans, repeatedly suggesting that the individual plans can be amended at any time. The EIS should evaluate the corrugated regulatory landscape the coastal districts are expected to skate through and the resulting socioeconomic effects on vast areas of the state. Since the regulations promulgated by the state to implement the amendment are so rigid and restrictive, that

evaluation should include an evaluation of the ability of coastal districts to respond to future changes to federal and state laws and regulations that affect the uses and resources of the coastal zone.

The alternatives proposed for the ACMP are insufficient. Additional alternatives should be developed, including alternatives that provide more flexibility to coastal districts for the development of enforceable policies and alternatives less severe than removing consideration of air and water quality from the process, that include habitat standards that recognize the living resources dependent on the coast, and/or do not restrict districts to applying policies to a hopscotch board of designated areas. While an "up or down vote" may be reasonable for a political appointment, amending management of the coastal zone of the state with the longest coast in the nation and a coastal area that is home to the majority of the state's population requires a more nuanced approach. The most recent amendment to the ACMP that was concluded in 2002 was conducted over several years and with ample participation from around the state. This allowed for much give-and-take and for consensus to be reached.

The "no action" alternative should be thoroughly evaluated for its impacts to coastal uses and resources in the 21<sup>st</sup> century of challenges such as arctic warming and resource development pressures.

Although the stated purpose of the ACMP amendment was "to improve the State's consistency review process both in timing and predictability, reduce duplication of permit review with uneven or vague standards, and provide certainty for capital commitments," the amendment and its implementing regulations fail to achieve the stated intentions. The proposed amendment has created confusion, uneven and convoluted standards, and a disconnected playing field for applicants. The EIS should thoroughly evaluate the conflicting guidance issued by DNR, the peculiar terms and concepts "legitimately inadequately addressed," "more specific but not more stringent"), the different standards for the statewide standards (application, reach, and effects all vary widely), the additional requirements for applicants (OPMP is not a one-stop permitting agency since many of the previously networked permitting processes have been uncoupled) and other muddled elements of the amendment and regulations.

The proposed amendment would hurt coastal uses and resources and the inhabitants of coastal communities by its inflexibility. The EIS should evaluate the effects of such program elements as designated areas that must be mapped and described in great detail, which effectively requires coastal districts to project potential developments and lock in zoning that may later render district communities and residents unable to respond to changes such as those resulting from climate change, availability of resources, changing migration patterns, availability of new technologies, and unexpected economic opportunities or disasters.

The dewatering of the ACMP through the DEC "carve-out," the gutting of the habitat standard, hamstringing of the subsistence standard, and the dismemberment of habitat authorities must be thoroughly evaluated in the EIS.

The EIS should analyze who benefits from the proposed amendment and who loses. For instance, in a state with great mining potential and some enormous mining projects under exploration in coastal areas, how does the lack of a mining standard affect coastal districts and communities, and how may they address mining in their district plans? If, as DNR claims, the amendment and new regulations add certainty for capital commitments, how is that effect achieved? How do coastal zone residents, indeed, state residents benefit from the loss of ability to address effects of projects on the Outer Continental Shelf? How will marine and other resources that are shared by many nations benefit from the amended ACMP?

The EIS should thoroughly evaluate the due deference accorded coastal districts under the existing ACMP and the due deference that would be accorded to districts under the proposed amendment and its implementing regulations.

The NEPA scoping period for the proposed amendment to the ACMP should be extended and scoping should be conducted in additional communities. By conducting this scoping so briefly and during Alaska's summer, OCRM is disenfranchising the many in this vast state who must be away from their communities for subsistence, commercial fishing, seasonal forest firefighting, and many other activities that require residents to be away from their communities in the summer. Such an extensive and significant overhaul of the coastal program for a state with a mostly pristine coastal zone with communities spread along thousands of miles of coast requires a more substantial effort at outreach and communication before important protections and rights are lost.

Thank you for the opportunity to comment.

Sincerely,

Sandy Harbanuk 604 Fourth Street Juneau, Alaska 99801 907/586-2207 sandyharb@ak.net Subject: FW - AK EIS comments From: "John King" <John.King@noaa.gov> Date: Mon, 08 Aug 2005 12:17:36 -0400 To: Helen Bass <Helen.Bass@noaa.gov>

Date:Sat, 6 Aug 2005 12:24:02 -0800

From:Dr. Lynn Zender <u><|zender@zender-engr.net>|</u>
To: <u><|siohn.king@noaa.gov>|</u>
CC: <u><|schris.stevens@noaa.gov>|</u>

<a href="mailto:ssebalo@zender-engr.net>">

Good day, I am writing to comment on the intent to prepare an EIS for approval of Amendments to the Alaska Coastal Management Program. The changes that the State of Alaska has proposed will likely have a substantial and deleterious effect on Coastal and Lower Kuskokwim and Yukon River Communities. These communities have not been consulted by the State in an adequate matter as required by law. The State continues its policies of equating ANCSA corporations to Native communities, and to hold any information meetings in Bethel. It is extremely difficult for Coastal and lower River Village leaders and residents to make a trip to Bethel. Consequently any testimony that the State receives has been heavily weighted with comments from pro-development interests, including Anchorage firms. In fact, the vast majority of stakeholders, those that would be most directly impacted by the State's Amendments are opposed to any changes that could negatively impact their traditional subsistence areas.

We work with many of the affected communities and their governments closely. Non-hub Native Villages have not been consulted in a manner that has informed them of the exact nature of the changes, or how the changes could affect their communities.

As an example, we work with a group of 6 sovereign coastal Tribal governments and communities in the Nelson Island Area that finished a three day meeting on July 31<sup>st</sup>. On Friday, the Cenaliulriit Coastal Management District presented the State's proposed amendments to the Coastal Management Program. We have videotaped testimonies by Tribal, City, and Traditional leaders, as well as numerous resident stakeholders who stated that they were not aware of the proposed changes and were strongly opposed to them. This intensity of feeling against any impact to subsistence or erosion of traditional authority over traditional use land and water matches that which we have heard when working with other villages in this region.

Of particular concern to these stakeholders are the changes that the State proposes in regards to subsistence. Any potential impact to subsistence is not acceptable to these communities. Their entire way of life depends on the continuation of subsistence lifestyle. The non-hub 25 communities in the Lower Kuskowkim School District speak Yupik as a first language, and maintain a distinct culture that is the last indigenous group in the United States that have kept their traditions, language, and lifestyle intact. If subsistence is impacted, even at a level considered "minimal", research indicates that the concerns of the communities will disproportionately affect the continuance of that lifestyle and traditions. The State's amendments disproportionately affect Alaska Native communities.

Several changes to the State's plan have weakened the subsistence standard. Provisions to assure access to subsistence resources have been removed. District policies can only be established for areas designated for subsistence use. Policies may only address the use and not the resource itself. It remains to

be seen what evidence DNR will require for establishment of a subsistence use area (subsistence use changes from year-to-year due to changes in migration patterns). Comments on draft plans by DNR state that the "avoid or minimize" clause in the standard adequately addresses most issues and that districts could only "allow or disallow" a use. The standard does not include a mitigation clause even though many development projects that will proceed, because of the imbalance of corporate and outside interests local impacted populations, will have adverse impacts where mitigation would be appropriate, and should be required.

Further, the mining standard has been replaced by a sand and gravel extraction standard that only applies to areas with saltwater or barrier islands. Placer mining and hard rock mining are no longer a "subject use" of the ACMP.

Finally, the proposed standard removes the requirement to maintain and enhance habitats unless a project meets the three-part test. DNR is interpreting the management measures in subpart (b) of the standard as the only matters that can be addressed for each habitat listed. Most references to living resources have been removed from the management measures in subpart (b). DNR is saying that the "avoid, minimize or mitigate" clause in the standard adequately addresses all impacts to habitat (but it says that districts can establish policies that "allow or disallow" uses). Upland habitats have been removed as a special category in the standard. Districts may only establish policies for areas they designate as important habitat (it will be difficult to establish important habitats because of the new requirements). State law is inadequate to protect habitats (the Office of Habitat Management and Permitting has only two narrow laws and no regulations). It continues to be amended towards less and less protection of habitat, which is critical to subsistence.

If the State amendments are allowed as proposed, cultural loss and adverse effects on community well-being could be irrevocably added to already distressed communities. Subsistence practices and the culture based on it has been demonstrated to be key to community resiliency.

In closing, I urge you to set up public scoping meetings in non-hub villages, working in cooperation with local leaders and Inter-tribal or community advocacy groups that are skilled in interfacing with communities on technical matters. An adequate public scoping process must be included before the State's amendments should be considered or approved.

Sincerely,

Lynn Zender, Ph.D. Zender Environmental Science and Planning Services 308 G St. Ste. 312 Anchorage, AK 99501

tel: 907 277-2111 fax: 907 222-3416

email: lzender@zender-engr.net

Subject: [Fwd: Mayor Ahmaogak's comments on ACMP]

From: "John King" < John.King@noaa.gov>
Date: Mon, 08 Aug 2005 12:19:25 -0400
To: Helen Bass < Helen.Bass@noaa.gov>

----- Original Message -----

Subject: Mayor Ahmaogak's comments on ACMP

Date: Fri, 5 Aug 2005 16:53:07 -0800

To: <john.king@noaa.gov>

CC:Malia Texeira <a href="Malia.Texeira@north-slope.org">Malia.Texeira@north-slope.org</a>

Attached are the comments from George N. Ahmaogak, Sr., Mayor of the North Slope Borough in Barrow, Alaska. <<Mayor's comments OCRM 8-5-05.doc>>

Mayor's comments OCRM 8-5-05.doc

Content-Type:

application/msword

Content-Encoding: base64

1 of 1

# Alaska Coastal Management Program Environmental Impact Statement Scoping Meeting

Testimony of Walter Porter Planning Director Northwest Arctic Borough

> July 28, 2005 Juneau, Alaska

For the record, my name is Walter Porter, Planning Director for the Northwest Arctic Borough. I am testifying on behalf of the Northwest Arctic Borough with the consent of Mayor Roswell Schaeffer.

I wish to begin by expressing appreciation to the Office of Ocean and Coastal Resource Management for holding scoping meetings in Alaska for the proposed amendments to the Alaska Coastal Management Program (ACMP). The changes to the ACMP will have profound effects to Alaska's coastal districts, the resource and uses within those coastal districts and eventually to the people living in those districts.

In order to gain a complete understanding of the effects of the proposed amendment to the ACMP, all of the proposed changes must be looked at together. While some of the changes may not seem important in isolation, they would have significant effects to coastal uses or resources when combined with other changes.

My testimony today will focus on 7 matters that should be analyzed in-depth in the environmental impact statement (EIS): Subsistence, mining, oil and gas, air and water quality, habitat, local control and safeguards. Because the impacts of these changes will have cumulative effects and synergies, the cumulative impact analysis of the proposed changes should be comprehensive.

#### Subsistence

Subsistence use is extremely important in the Northwest Arctic Borough. The people of the region use marine mammals, fish, land-based mammals, birds, berries, and plants not only to put food on the table, but for cultural sustenance as well.

For over 25 years, the ACMP has provided Alaska's coastal districts and its subsistence users an important tool to work with government agencies and project applicants to ensure protection of subsistence resources and control of the socio-economic impacts on our human populations. There are few other tools for addressing project impacts to subsistence, and the EIS should include a thorough analysis of how the changes will affect subsistence uses and the associated resources. Specifically, the effects of changes to the statewide subsistence standard, the new requirements that districts may only establish policies for designated areas and the new

Alaska Coastal Management Program Scoping Meetings Northwest Arctic Borough Comments

restrictions that will limit the ability of districts to establish subsistence policies should all be examined in the EIS.

## Mining

The Northwest Arctic Borough supports economic development, and we recognize that new development will be needed to employ our residents. At the same time, we also recognize the need for local coastal management tools to ensure development is compatible with subsistence and other resources and uses. Significant mineral deposits exist throughout the borough, and it is home to the largest lead-zinc mine in the world. The proposed changes would eliminate our most important tools for reducing coastal impacts from mining. First, the mining standard would be eliminated under the proposal and be replaced with a narrow standard that only addresses sand and gravel extraction in saltwater areas. Second, the elimination of the mining standard removes our ability to establish district enforceable policies for mining activities. These enforceable policies have been an important means to reduce impacts from mining, and without them, coastal resources and uses will have new impacts. The EIS should investigate this issue.

## Oil and Gas

There are no oil and gas development currently in the Northwest Arctic Borough, but just last week, the Anchorage Daily News published an article about renewed interest in oil and gas exploration in waters offshore of the borough in the Chukchi Sea. Although the proposed changes only include minor changes to the state Energy Facilities standard, new restrictions in establishing enforceable policies will significantly reduce the ability of coastal districts to address impacts of oil and gas activities.

One of the major problems with the proposed changes is the assertion by the Alaska Department of Natural Resources (DNR) that districts must designate an area as suitable for energy development before they can establish oil and gas enforceable policies. This raises two problems. First, the district does not have access to confidential industry information regarding the location of oil and gas resources. Second, the people of the region do not support offshore oil and gas development because of the potential for an oil spill to damage subsistence resources. It does not seem fair that we would be precluded from establishing policies for oil and gas development in marine waters, the area where an oil spill would have the most devastating consequences.

## Air and Water Quality

The 2003 legislation removed matters regulated by the Department of Environmental Conservation (DEC) from the consistency review process. DNR interprets this legislation to mean that districts cannot establish any air or water quality policies, even for matters not regulated by DEC. In fact, DEC has commented on our draft plan that we cannot use the term "environment" because it could be interpreted as including air and water quality.

The concept of separating out different aspects of the environment is foreign to the people of the region. Air and water quality is so closely connected to other resources and uses that we cannot

adequately address effects to habitat, fish and wildlife or subsistence without looking at air and water quality at the same time.

As an example, under the proposed changes, when we review an offshore oil and gas project, we will not be able to comment on the effects of an oil spill because it is a matter regulated by DNR. For Outer Continental Shelf (OCS) projects, there would be no public forum to discuss air and water quality during the consistency review because the DEC has no authority to issue permits for OCS activities. The "DEC carve-out" has profound implications that should be evaluated in the EIS.

### Habitat

The changes to the state Habitats standard and new restrictions to district enforceable policies will likely result in significant degradation to habitat in Alaska. The state Office of Habitat Management and Permitting does not have adequate resources because they only have two statutes limited to anadromous fish streams and impoundments of water. The statewide habitats standard has provided an important forum to reduce impacts to habitat from development projects. Specifically, the three-part test in the current standard has been instrumental in negotiating project changes with applicants. This provision has been eliminated along with the requirement that applicants must meet the three-part test if the project does not maintain or enhance habitats.

DNR now interprets part (b) of the standard to provide the only management measures for consideration during consistency reviews. Although management measures have always been outlined in the habitat standard, the state has never interpreted this standard to limit consideration of measures to what is outlined in the standard. The proposed new Habitats standard would eliminate almost all references to living resources, so the only management measures that could be considered during a consistency review would not relate directly to fish and wildlife.

New restrictions on establishment of enforceable policies require establishment of important habitat areas before a district can establish an enforceable policy. DNR has stated that it believes it will be difficult for districts to meet the new standards for establishment of important habitat areas. Even when a district is able to establish an important habitat area, DNR has stated that district will be limited to "allowing or disallowing" a use. This new restriction will remove our ability to negotiate with applicants to find a solution to activities that could affect habitats.

### **Local Control**

The changes to the ACMP have removed many provisions for local involvement in coastal decisions. The elimination of the Coastal Policy Council removed an important role for districts in establishment of coastal policy and in approving district program changes. In addition, the DNR has stated that there will no longer be district representation on the ACMP Working Group. As mentioned previously, new restrictions on enforceable policies will have a significant effect on a district's ability to management coastal uses and resources. These changes will have greater impacts on coastal resources and uses.

## Removal of Safeguards

Many safeguards present in the former program have been removed. Transference of the Habitat Division and the ACMP to the DNR and abolishment of the Coastal Policy Council will limit the input of the other resources agencies. In addition, citizen lawsuits are no longer possible for ACMP consistency review decisions. These combinations of these changes will significantly affect the ability of the state to ensure there is a balance between development and protection of coastal resources and uses. The EIS must include a thorough analysis of effects of these changes.

## Closing Remarks

In closing, the Northwest Arctic Borough is very concerned about the effects of the proposed changes to the ACMP and the potential environmental effects of these changes. There is much uncertainty about the effects of these changes. For example, I haven't yet met anyone who seems to fully understand the changes to the ACMP, especially in regard to the new requirement for enforceable policies. To gain a complete understanding of the proposed changes, the EIS team should complete a full analysis of the comments by the state on the Public Hearing Drafts of the district plans. After reading the comments on our plan, I do not see how we could develop any meaningful policies. The lack of district policies will certainly have an adverse effect on coastal resources and uses.

My testimony has only addressed a few major issues. Certainly there are many other issues that should be discussed in the EIS. At a minimum, the new EIS should compare the proposed changes to what was analyzed in the original EIS for the ACMP.

The Northwest Arctic Borough looks forward to working with OCRM during development of the EIS, and it encourages OCRM to develop a plan for meaningful government-to-government consultation with Alaska tribes.

Again, thank you for the opportunity to testify at this scoping meeting.

Subject: Comments Alaska Coastal Management Program

From: "Steve Sumida" <deputy@alaskaintertribal.org>

Date: Wed, 13 Jul 2005 13:39:46 -0800

To: <helen.bass@noaa.gov>

CC: "AITC" <aitc@alaskaintertribal.org>, "Anne Jourdan" <ajourdan@alaskaintertribal.org>, "Ian Erlich" <ierlich@maniilaq.org>,

"Mike Williams" <mwilliams19522004@yahoo.com>

July 12, 2005

Helen Bass

Environmental Protection Specialist

Coastal Programs Division

Office of Ocean and Coastal Resource Management

National Ocean Service

SSMC4, N/ORM3, Room 11207

1305 East West Highway

Silver Spring, MD 20910

Submitted by email: helen.bass@noaa.gov

Dear Ms. Bass:

The Alaska Inter-Tribal Council submits these initial comments on scoping for the environmental impact statement (EIS) for the proposed approval of amendments to the Alaska Coastal Management Program (ACMP). We are extremely concerned about the social, cultural and environmental effects of the proposed changes on Alaska Native people, especially changes that will affect subsistence uses and resources, habitat and air and water quality.

The Alaska Inter-Tribal Council appreciates the fact that the Office of Ocean and Coastal Resource Management (OCRM) is holding three scoping meetings in Alaska. We are disappointed, however, that there does not appear to have been any effort by OCRM to meet the intent of executive orders on environmental justice (EO 12898) or government-to-government consultation (EO 13175) during the scoping process.

While we have not had an opportunity to do an in-depth analysis of the effects of the ACMP, it appears that these changes will profoundly affect the Native people of Alaska. The changes to the ACMP have a disproportionately high adverse impact to Native people because of their dependence on subsistence uses and resources, clean air and water and healthy habitats.

The scope of the EIS should include a comprehensive examination of the effects of each change. At a minimum, the EIS should analyze the environmental and social effects of the following changes to Native people and low income residents of ruralAlaska. The analysis should include cumulative effects from all the changes.

Elimination of the Coastal Policy Council.

- Removal of activities regulated by the Alaska Department of Environmental Conservation from coordinated consistency
  reviews, including the fact that these activities are only reviewed for compliance with the air, land and water quality standard
  (i.e., they will no longer be reviewed for consistency with the other statewide standards or local coastal district enforceable
  policies).
- Weakening of provisions in the statewide subsistence standard.
- Reducing the effectiveness of the statewide habitats standard and limiting habitat considerations in the ACMP to specific
  management measures outlined in part (b) of the statewide standard.
- Elimination of the statewide standard on mining, other than gravel extraction in coastal waters.
- Transference of the Division of Habitat and the ACMP to the Alaska Department of Natural Resources.
- New limitations on the ability for coastal districts to establish enforceable policies, especially policies related to subsistence, air and water quality, and habitats.
- Inability for coastal districts to establish policies on energy facilities without designating an area as suitable for energy development.
- · Inability for coastal districts to address activities on federal lands and water, including the Outer Continental Shelf.
- Fewer projects will undergo ACMP reviews in the future when the "ABC list" of expedited reviews is amended as directed by the legislation.

The Alaska Inter-Tribal Council recommends that the scoping process be extended to allow OCRM to develop an effective public involvement strategy that reflects commitments made in executive orders 12898 and 13175 regarding environmental justice and government-to-government consultation with sovereign federally recognized tribal governments through their traditional and IRA councils. Few rural residents read the Federal Register, and rather than limiting publication of meeting notices and opportunities to comment to the Federal Register, local newspaper ads and public service announcements on local radio stations should be considered. Because many rural Alaska Natives, especially elders, do not speak English as a first language, the strategy should include provisions to translate crucial documents and public comments at meetings. Also, because many rural residents are living below the poverty level, the strategy should include methods to make public meetings more accessible.

The June 2, 2005 description of the ACMP submitted to your office by the State of Alaska is extremely confusing, especially the description of new requirements for coastal district enforceable policies. This document is full of jargon and vague concepts not easily understood by the average Alaskan. It is imperative that the EIS include clear and understandable discussions about the effects of the proposed changes to the ACMP.

The Alaska Inter-Tribal Council appreciates this opportunity to provide initial comments on scoping for the ACMP EIS. Please contact Steve Sumida, Acting Executive Director, Alaska Inter-Tribal Council, 750 West 2<sup>nd</sup> Avenue, Suite 215, Anchorage, AK 99501, direct 907-264-4802, main 907-563-9334, fax 907-563-9337, emailaitc@alaskaintertribal.org or ssumida@alaskaintertribal.org if you have any questions about this letter.

Sincerely,

By Steven E. Sumida, Acting Executive Director, for

Ian Erlich, Chair

Alaska Inter-Tribal Council

1 2	ALASKA	COASTAL MANAGEMENT PROGRAM
3		EIS SCOPING MEETING
5		7.7.00
6		July 28, 2005 8:00 a.m.
7		200 2000000 2000000000
8		Juneau, Alaska
~		Centennial Hall

Recorded and transcribed by:

Computer Matrix Court Reporters, LLC 3522 West 27th Avenue Anchorage, AK 99517 907-243-0668 jpk@gci.net

1 PROCEEDINGS
2 (On record - 8:27 a.m.)

- 3 MR. SMITH: My name is Odin Smith, I'm
- 4 with NOAA General Counsel. And I'm here with Masi
- 5 Okasaki from NOAA's Office of Ocean and Coastal Resource
- 6 Management. And I'll try to keep this brief before my
- 7 voice tries to give out.
- 8 We're here basically conducting public
- 9 scoping meetings for the proposed amendments to the
- 10 Alaska Coastal Management Program, and -- you probably
- 11 need -- I'm just going to go ahead and give you a short
- 12 overview of our review process, and then I guess if we
- 13 have anybody who wants to speak, we'll let them do so.
- 14 Basically the environmental review
- 15 process that we're starting with these scoping meetings
- 16 is under the National Environmental Policy Act which
- 17 basically requires that for every major federal action
- 18 affecting the quality of the human environment, the
- 19 federal agency has to go through a review process, look
- 20 at the environmental impacts of the action, any adverse
- 21 impacts that can't be avoided, alternatives to the
- 22 proposed action, the relationship between the short-term
- 23 uses and long-term productivity, and any irreversible or
- 24 irretrievable commitment of resources that would be
- 25 entailed.

- 1 The program amendment basically consists
- 2 of two statutory changes and three regulatory changes,
- 3 and these are -- well, they're upon the web site. I'll
- 4 bring up that address.
- 5 Basically the scoping that we're looking
- 6 for is just an opportunity for the interested public to
- 7 let us know what sort of concerns they have, what sort of
- 8 issues they'd like to see addressed in the environmental
- 9 impact statement, and also any comments on suggested
- 10 alternatives. Basically the two alternatives that we
- 11 have before us are basically either to approve the
- 12 amendments or not to approve them.
- 13 And the outline of the EIS is going to be
- 14 basically an executive summary, introduction with
- 15 discussion of public scoping and public involvement, and
- 16 a purpose and needs section, and a description of
- 17 alternatives, description of the program change,
- 18 description of the environment affect, including physical
- 19 and socio-economic, the impacts of the alternatives, and
- 20 then finally a list of agencies and persons consulted,
- 21 index and appendices.
- 22 Our schedule is this week we're
- 23 conducting scoping meetings. We just had them earlier
- 24 this week in Barrow and Anchorage. We will be accepting
- 25 written comments until August 5th, and we encourage

- 1 people to send those in. August 26th we're going to
- 2 issue the draft environmental impact statement for a 45-
- 3 day review period, public comment period. We're going to
- 4 be holding public meetings in September on that draft
- 5 environmental impact statement, and then the comment
- 6 period will end on October 10th, and then we're going to
- 7 issue the final environmental impact statement for 30
- 8 days on November 19th, looking to adopt the EIS on
- 9 December 19th, and then finally to issue our record of
- 10 decision and the program amendment decision on December
- 11 28th.
- 12 Our point of contact is Helen Bass who
- 13 works at NOAA. She unfortunately couldn't be here today,
- 14 although she did want to be here, and you can mail
- 15 comments to her or send them by email. Her email address
- 16 is up there. And then finally there's the Alaska program
- 17 change document web site address.
- 18 So if we have anybody who'd like to
- 19 speak, I'll turn over the floor to them.
- 20 MS. OKASAKI: We have one. Walter is the
- 21 only one who wants to speak.
- 22 REPORTER: If you'd like to sit at the
- 23 table, I can move....
- MR. PORTER: Oh, sure. That would be
- 25 great.

- REPORTER: ....the mic there. 2 MR. PORTER: First off, I'm glad there's room for me here. What kind of a turn-out did you have in Anchorage? 5 MR. SMITH: We had about five people speak, and about .... 7 MS. OKASAKI: Nine or 10 people show up. 8 MR. PORTER: Oh, I see.
- 9 MR. SMITH: And Barrow's about the same.
- 10 MS. OKASAKI: Right.
- 11 REPORTER: Walter....
- 12 MR. PORTER: Yes?
- 13 REPORTER: .....is it okay if I get you
- 14 to move to the microphone?

1

- 15 MR. PORTER: Oh, not a problem. First
- 16 off I'd like to say I appreciate being here. For the
- 17 record, my name is Walter Porter, Planning Director for
- 18 the Northwest Arctic Borough, and I'm testifying on
- 19 behalf of the Northwest Arctic Borough with the consent
- 20 of Mayor Roswell Schaeffer.
- 21 And you're probably wondering what I'm
- 22 doing so far away from home, and I have other business
- 23 here in Juneau, and I'm also from this area, so -- I've
- 24 been gone for about seven years, so any time I get a
- 25 chance to squeeze a trip down this far, I do it. So.....

- 1 I wish to begin by expressing my
- 2 appreciation to the Office of Ocean and Coastal Resources
- 3 Management for holding scoping meetings in Alaska for the
- 4 proposed amendments to the Alaska Coastal Management
- 5 Program. The changes to the ACMP will have profound
- 6 effects to the Alaska coastal districts, the resources
- 7 and the uses within those coastal districts, and
- 8 eventually to the people living in those districts.
- 9 In order to gain a complete understanding
- 10 of the effects of the proposed amendment to the ACMP, all
- 11 of the proposed changes must be looked at altogether.
- 12 While some of the changes may not seem important in
- 13 isolation, they would have significant effects to coastal
- 14 uses and resources when combined with other changes.
- 15 My testimony today will focus on seven
- 16 matters that should be analyzed in-depth in the
- 17 environmental impact statement: subsistence, mining, oil
- 18 and gas, air and water quality, habitat, local control
- 19 and safeguards. Because the impacts of these changes
- 20 will have cumulative effects and synergies, the
- 21 cumulative impact analysis of the proposed changes should
- 22 be comprehensive.
- 23 Subsistence. Subsistence use is
- 24 extremely important to the Northwest Arctic Borough. The
- 25 people of the region use marine mammals, fish, land-based

- 1 mammals, birds, berries, and plants not only to put food
- 2 on the table, but for cultural sustenance as well.
- For over 25 years the ACMP has provided
- 4 Alaska's coastal districts and its subsistence users an
- 5 important tool to work with government agencies and
- 6 project applicants to ensure protection of the
- 7 subsistence resources and control of the socio-economic
- 8 impacts on our human populations. There are few other
- 9 tools for addressing project impacts to subsistence, and
- 10 the EIS should include a thorough analysis of how the
- 11 changes will affect subsistence uses and the associated
- 12 resources. Specifically, the effects of changes to the
- 13 statewide subsistence standard, the new requirements that
- 14 districts may only establish policies for designated
- 15 areas and the new restrictions that will limit the
- 16 ability of districts to establish subsistence policies
- 17 should all be examined in the EIS.
- 18 Mining. The Northwest Arctic Borough
- 19 supports economic development, and we recognize that new
- 20 development will be needed to employ our residents. At
- 21 the same time, we also recognize the need for local
- 22 coastal management tools to ensure development is
- 23 compatible with subsistence and other resources and uses.
- 24 Significant mineral deposits exist throughout the
- 25 borough, and it is the home of the largest lead-zinc mine

- 1 in the world. The proposed changes would eliminate our
- 2 most important tools for reducing coastal impacts from
- 3 mining. First, the mining standard would be eliminated
- 4 under the proposal and be replaced with a narrow standard
- 5 that only addresses sand and gravel extraction in
- 6 saltwater areas. Second, the elimination of the mining
- 7 standard removes our ability to establish district
- 8 enforceable policies for mining activities. these
- 9 enforceable policies have been an important means to
- 10 reduce impacts from mining, and without them, coastal
- 11 resources and uses will have new impacts. The EIS should
- 12 investigate this issue.
- 13 Oil and gas. There are no oil and gas
- 14 development currently in the Northwest Arctic Borough,
- 15 but just last week the Anchorage Daily News published an
- 16 article about renewed interest in oil and gas exploration
- 17 in waters offshore of the borough in the Chukchi Sea.
- 18 Although the proposed changes only include minor changes
- 19 to the state energy facilities standard, new restrictions
- 20 in establishing enforceable policies will significantly
- 21 reduce the ability of coastal districts to address
- 22 impacts of oil and gas activities.
- One of the major problems with the
- 24 proposed changes is the assertion by the Alaska
- 25 Department of Natural resources that districts must

- 1 designate an area as suitable for energy development
- 2 before they can establish oil and gas enforceable
- 3 policies. This raises two problems. First, the district
- 4 does not have access to confidential industrial
- 5 information regarding the location of oil and gas
- 6 resources. Second, the people of the region do not
- 7 support offshore oil and gas development because of the
- 8 potential for an oil spill to damage subsistence
- 9 resources. It does not seem fair that we would be
- 10 precluded from establishing policies for oil and gas
- 11 development in marine waters, the area where an oil spill
- 12 would have the most devastating consequences.
- 13 Oil (sic) and water quality. The 2003
- 14 legislation removed matters regulated to the Department
- 15 of Environmental Conservation from the consistency review
- 16 process. The DNR interprets this legislation to mean
- 17 that districts cannot establish any air or water quality
- 18 policies, even for matters not regulated by DEC. In
- 19 fact, DEC has commented on our draft plan that we cannot
- 20 use the term environment because it could be interpreted
- 21 as including air and water quality.
- The concept of separating out different
- 23 aspects of the environment is foreign to the people of
- 24 the region. Air and water quality is so closely
- 25 connected to other resources and uses that we cannot

- 1 adequately address effects to habitat, fish and wildlife
- 2 or subsistence without looking at air and water quality
- 3 at the same time.
- 4 As an example, under the proposed
- 5 changes, when we review an offshore oil and gas project,
- 6 we will not be able to comment on the effects of an oil
- 7 spill, because it's a matter regulated by DNR. For out
- 8 continental shelf projects, there would be no public
- 9 forum to discuss and water quality during the consistency
- 10 review, because the DEC has no authority to issue permits
- 11 for OCS activities. The DEC carve-out, quote, DEC carve-
- 12 out has profound implications that should be evaluated in
- 13 the EIS.
- 14 The changes to the state habitats
- 15 standards, and new restrictions to district enforceable
- 16 policies will likely result in significant degradation to
- 17 habitat in Alaska. The state Office of Habitat
- 18 Management and Permitting does not have adequate
- 19 resources, because they only have two statutes limited to
- 20 anadromous fish streams and impoundments of water. The
- 21 statewide habitat standard has provided an important
- 22 forum to reduce impacts to habitat from development
- 23 projects. Specifically, the three-part test in the
- 24 current standard has been instrumental in negotiating
- 25 project changes with applicants. This provision has been

- 1 eliminated along with the requirement that applicants
- 2 must meet the three-part test if the project does not
- 3 maintain or enhance habitats.
- 4 DNR now interprets part (b) of the
- 5 standard to provide the only management measures for
- 6 consideration during consistency reviews. Although
- 7 management measures have always been outlined in the
- 8 habitat standard, the state has never interpreted this
- 9 standard to limit consideration of measures to what is
- 10 outlined in the standard. The proposed new habitats
- 11 would eliminate almost all reference to living resources,
- 12 so the only management measures that could be considered
- 13 a consistency review would not relate directly to fish
- 14 and wildlife.
- New restrictions on the establishment of
- 16 enforceable policies require establishment of important
- 17 habitat areas before a district can establish an
- 18 enforceable policy. DNR has stated that it believes it
- 19 will be difficult for districts, excuse me, to meet the
- 20 new standards for establishment of important habitat
- 21 areas. Even when a district is able to establish an
- 22 important habitat area, DNR has stated that districts
- 23 will be limited to, quote, allowing or disallowing,
- 24 unquote, a use. This new restriction will remove our
- 25 ability to negotiate with applicants to find a solution

- 1 to activities that could affect habitats.
- 2 Local control. The changes to the ACMP
- 3 have removed many provisions for local involvement in
- 4 coastal decisions. The elimination of the Coastal Policy
- 5 Council removed an important role for districts in
- 6 establishing of coastal policy and in approving district
- 7 program changes. In addition, the DNR has stated that
- 8 they (sic) will no longer be district representation on
- 9 the ACMP Working Group. As mentioned previously, new
- 10 restrictions on enforceable policies will have a
- 11 significant effect on a district's ability to management
- 12 -- to manage coastal uses and resources. This change
- 13 will have greater impacts on coastal resources and uses.
- 14 Removal of safeguards. Many safeguards
- 15 present in the former program have been removed.
- 16 Transference of the Habitat Division and the ACMP to the
- 17 DNR and abolishment of the Coastal Policy Council will
- 18 limit the input of other resource agencies. In addition,
- 19 citizen lawsuits are no longer possible for ACMP
- 20 consistency review decisions. This combination -- these
- 21 combinations of these changes will significantly affect
- 22 the ability of the state to ensure that there is a
- 23 balance between development and protection of the coastal
- 24 resources and uses. The EIS must include a thorough
- 25 analysis of effects of these changes.

- 1 In closing, the Northwest Arctic Borough
- 2 is very concerned about the effects of the proposed
- 3 changes to the ACMP and the potential environmental
- 4 effects of these changes. There is much uncertainty
- 5 about the effects of these changes. For example, I
- 6 haven't yet met anyone who seems to fully understand the
- 7 changes to the ACMP, especially in regard to the new
- 8 requirements for enforceable policies. To gain a
- 9 complete understanding of the proposed changes, the EIS
- 10 team should complete a full analysis of the comments by
- 11 the state on the public hearing drafts of the district
- 12 plans. After reading the comments on our plan, I do not
- 13 see how we could develop any meaningful policies. The
- 14 lack of district policies will certainly have an adverse
- 15 effect on coastal resources and uses.
- 16 My testimony has only addressed a few
- 17 major issues. Certainly there are many issues that
- 18 should be discussed in the EIS. At a minimum, the new
- 19 EIS should compare the proposed changes to what was
- 20 analyzed in the original EIS for the ACMP.
- 21 The Northwest Arctic Borough looks
- 22 forward to working with OCRM during development of the
- 23 EIS, and it encourages OCRM to develop a plan meaningful
- 24 for government-to-government consultation with Alaska
- 25 tribes.

- 1 That deserves a couple more comments. As
- 2 you know, most of our communities, even including Juneau,
- 3 Sitka, Ketchikan, and major areas, major cities in Alaska
- 4 originally were tribal communities, and if you look at
- 5 the history of this particular area in Juneau here,
- 6 there's actually several communities, native communities
- 7 in this area. And certainly it's interesting in the last
- 8 few years to see the impact of tribal activity. Since
- 9 ANCSA it's stepped up somewhat. Even though it's
- 10 different from ANCSA, we see more and more government-to-
- 11 government activity with tribes, and especially the state
- 12 government.
- 13 Northwest Arctic Borough has officially
- 14 recognized all the tribes in its area when Chuck Green
- 15 was the borough mayor up there, and likewise to Roswell
- 16 Schaeffer who is the present mayor in that region. So we
- 17 -- much of our activity, even though we're not directly
- 18 responsible for tribes, is interacting with and around
- 19 tribal communities in our area.
- 20 So anyway, again, thank you for allowing
- 21 me to speak here today, and I'll be glad to entertain
- 22 questions if I'm able. A lot of this is very complex,
- 23 and some of you know normally if we would do something
- 24 like this, it would be over several years. This has been
- 25 quite quick for all of us. I'm about 15 or 16 months on

- 1 this new job, so learning all this material has been
- 2 sometimes difficult, and the learning curve has been big
- 3 and wide, so -- but anyway, I'll give any attempt to
- 4 answer any questions. And I'll send a copy of this to
- 5 Helen, so....
- 6 MS. OKASAKI: Thank you. Thank you.
- 7 MR. SMITH: Can I have a copy of that,
- 8 Walter, while....
- 9 MR. PORTER: Oh, yeah, sure. I brought
- 10 two just for that.
- MR. SMITH: Oh, cool.
- 12 MS. OKASAKI: You just came in, I don't
- 13 know if you wanted to talk?
- 14 UNIDENTIFIED VOICE: No, I'm here just
- 15 here to listen.
- MS. OKASAKI: Okay. Hopefully there's --
- 17 that's it that wanted to testify, so.....
- 18 REPORTER: Oh, you're a good man. Thank
- 19 you.
- 20 MS. OKASAKI: .....if you see anybody or
- 21 know of anyone, let them know we will be here until 5:00.
- 22 So I guess that's it.
- 23 (Off record 8:47 a.m.)
- 24 (On record 10:56 a.m.)
- MR. SMITH: You're on.

- 1 MS. CAMERY: I'm on. Okay. I'm Teri
- 2 Camery. I'm the planner and coastal district coordinator
- 3 for the City and Borough of Juneau. I've been part of
- 4 the coastal management program for four years now. I am
- 5 just going to try to summarize the written comments that
- 6 we mailed to OCRM a couple days ago here.
- 7 I guess in general our biggest concerns
- 8 are the loss of local policies. The state's program
- 9 changes have seriously limited the policies that local
- 10 districts can implement, and they've done that in a
- 11 number of ways, by eliminating the subjects that can be
- 12 addressed, by prohibiting uses of terms such as avoid,
- 13 minimize, mitigate, but setting a very, very high
- 14 standard for any habitat related policies. To the best
- 15 of our knowledge, there's no coastal district that has
- 16 yet figured out how to implement a habitat policy,
- 17 because the regulations are very, very strict in that
- 18 regard. So we have very strong concerns about the impact
- 19 of that. It leads to a much reduced local role in the
- 20 program. It leads to less habitat protection.
- 21 I think one thing that's very unique
- 22 about Alaska is that every district has its own specific
- 23 set of concerns, and therefore statewide standards can no
- 24 way address the individual situations of local
- 25 communities. So it's critically important to retain a

- 1 strong local voice, and that has been seriously impacted
- 2 by these changes.
- 3 Specifically, one of our biggest concerns
- 4 has always been retaining the Juneau wetland management
- 5 plan. We are losing that program, that part of our
- 6 coastal management program under these changes, because
- 7 the state forbids the use of avoid, minimize, mitigate.
- 8 The Juneau wetland management plan was established in
- 9 1992, is based on a decade of scientific research, and
- 10 it's very prescriptive, very specific. And it was
- 11 actually designed to expedite development on low value
- 12 wetlands. So it should be exactly the type of program
- 13 that the state wants to retain with their goal of
- 14 streamline and making the process more predictable, and
- 15 yet that has been eliminated under this program.
- 16 We're concerned about the loss of the
- 17 Coastal Policy Council, and replacing the authority of
- 18 that council with the DNR commissioner. We feel like the
- 19 entire authority of the program has been consolidated
- 20 into one agency, which is very dangerous just from a
- 21 democratic perspective. Again, we've lost our local
- 22 voice on that board that we formally had through the
- 23 Coastal Policy Council. That council provided a certain
- 24 amount of, you know, checks and balances and protecting
- 25 the public interest. And we have lost that.

- 1 We're concerned about the separation of
- 2 DEC from the process. We feel like that opens the door
- 3 to phasing, separating certain elements of projects out
- 4 from the review. It's very difficult to conduct an
- 5 adequate habitat review when you can't look at air and
- 6 water quality. Air and water quality is an essential
- 7 component of any habitat review. So that's another one
- 8 of our major.
- 9 And I guess overall I have to express a
- 10 great deal of frustration with this process in the past
- 11 two to three years here. The City and Borough of Juneau
- 12 has been expressing our concerns about these program
- 13 changes since the passage of the first bill, H.B. 191
- 14 back in 2003. And the districts formed the Alaska
- 15 Coastal District Association to state our opposition to
- 16 these policies. We voiced our concerns over and over and
- 17 over again to the state and to OCRM, and there have been
- 18 -- there's been virtually no response to our concerns.
- 19 There have been no changes to the regulations.
- 20 Specific to the Juneau wetland management
- 21 plan, we brought that up on day 1 that this was an
- 22 important element to retain, and the state has made no
- 23 changes. In fact, the state's habitat policies have
- 24 become ever stricter in terms of what local districts can
- 25 do.

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1
                   In the testimony on H.B. 191, districts
  were promised a broad role, and that has been steadily
   reduced.
                   So it's been a frustrating process, and
5 we've also seen the public process get steadily eroded
6 through this. We formerly had an ACMP working group.
7 That was dismantled throughout this review. So -- that
8 was initially set up so districts could have a -- could
9 be intregantly (ph) involved in the crafting of the
10 regulations, and that was dismantled. So we do not feel
11 that our concerns have been either heard or addressed.
12
                  I think that probably summarizes my
13 comments.
14
15
                  (Off record - 11:02 a.m.)
16
                   (END OF PROCEEDINGS)
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-	CERTIFICATE
2	
3	UNITED STATES OF AMERICA)
4	)ss.
5	STATE OF ALASKA )
6	
7	I, Joseph P. Kolasinski, Notary Public in and for
8	the state of Alaska, and reporter for Computer Matrix
9	Court Reporters, LLC, do hereby certify:
10	THAT the foregoing EIS Scoping Meeting on the Alaska
11	Coastal Management Plan was electronically recorded by
12	Computer Matrix Court Reporters, LLC on the 28th day of
13	July 2005, commencing at Centennial Hall in Juneau,
14	Alaska;
15	That this hearing was recorded electronically and
16	thereafter transcribed under my direction and reduced to
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18	IN WITNESS WHEREOF, I have hereunto set my hand and
19	affixed my seal this 10th day of August 2005.
20	
21 22 23 24 25	Joseph P. Kolasinski Notary Public in and for Alaska My Commission Expires: 3/12/08

1 2	ALASKA COASTAL MANAGEMENT PROGRAM
3	EIS SCOPING MEETING
4 5	July 27, 2005
6	8:00 a.m.
8	Egan Center
9	Anchorage, Alaska

6

Recorded and transcribed by:

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## 1 PROCEEDINGS

- 2 MR. SMITH: Well, good morning,
- 3 everybody. Thank you for coming. We're off to a
- 4 little bit of a slow start this morning. We were
- 5 hoping to get a few more people showing up today. My
- 6 name is Odin Smith, I'm NOAA's general counsel, and I'm
- 7 here with Masi Okasaki, who's also from NOAA, Office of
- 8 Ocean and Coastal Resource Management.
- 9 And we're here basically to elicit
- 10 public input on our review process as we review the
- 11 proposed amendments to the Alaska Coastal Management
- 12 Program. I'm just going to give a little brief
- 13 overview of our review process, and then we'll go ahead
- 14 and get started with people who want to speak, give
- 15 comments on the proposed amendments. I guess when you
- 16 come up to speak, we're hoping to get a lot more
- 17 people, so we'd like you, you know, if you could, keep
- 18 your comments brief, about five minutes or so. And if
- 19 you're going over and there are people waiting, we'll
- 20 let you know.
- 21 Also, there are some state DNR people
- 22 here who will be taking some pictures. If you don't
- 23 want your picture taken, just let me know so when you
- 24 come up to the microphone, and I'll refrain from taking
- 25 pictures.

- 1 Basically we're starting an
- 2 environmental impact review process mandated under the
- 3 National Environmental Policy Act. Basically any major
- 4 federal actions significantly affecting the quality of
- 5 the human environment requires a review process to
- 6 examine the environmental impacts, the adverse impacts
- 7 which cannot be avoided, alternatives to proposed
- 8 action, relationship between short-term uses and long-
- 9 term productivity, and then any irreversible commitment
- 10 of resources that would be involved.
- 11 The NOAA amendment process basically
- 12 entails first taking a preliminary look at the state's
- 13 proposed changes to their coastal management program.
- 14 The preliminary determination is for purposes of
- 15 determining whether to prepare an EA or an EIS, and
- 16 also to (indiscernible, away from microphone) the
- 17 funding under the federal program.
- 18 We've issued a notice to conduct an EIS
- 19 and gave notice of these meetings here, which are to
- 20 solicit public input. We'll be issuing a draft
- 21 environmental impact statement with a comment period
- 22 and hold new additional public hearings. And then
- 23 finally we will address comments and issue the final
- 24 environmental impact statement for 30 days and then
- 25 make a decision on the approval and issue a record of

- 1 decision.
- 2 The Alaska program amendment basically
- 3 consists of two statutory changes and three regulatory
- 4 changes, which are fully -- more fully described on the
- 5 state's web page, the address of which I'll have up at
- 6 the end.
- 7 Scoping under NEPA, basically it's an
- 8 opportunity for the interested public to give us their
- 9 comments at the very beginning of the review process,
- 10 to let us know what sort of potential impacts they're
- 11 concerned about, and also suggested alternatives to the
- 12 proposed action. The basic two alternatives that we're
- 13 looking at is either to approve the amendments or to
- 14 not approve the amendment.
- And finally the outline of the EIS.
- 16 It's basically going to be an executive summary,
- 17 including discussion of the public scoping and the
- 18 public involvement process, a purpose and needs
- 19 statement, description of alternatives, description of
- 20 the program change, description of the affected
- 21 environment, physical and socio-economic. The impacts
- 22 of the alternatives will then be discussed, and then
- 23 finally have a list of the agencies and persons
- 24 consulted in an index and appendices.
- The schedule we have for this process

- 1 is this week we're conducting scoping meetings. We
- 2 just had one in Barrow on Monday. We're here today and
- 3 then tomorrow we're in Juneau.
- 4 August 5th is the close of deadlines
- 5 for comments. We will be accepting and we encourage
- 6 written comments as well. And I will be putting up the
- 7 mailing address and email address that you can send
- 8 written comments in to.
- 9 August 26th we will be issuing the
- 10 draft environmental impact statement for a 45-day
- 11 comment period. In September we will be holding public
- 12 hearings on the draft environmental impact statement,
- 13 and that -- the 45-day comment period will end on
- 14 October 10th.
- November 18th we'll be issuing the
- 16 final environmental impact statement for 30 days, and
- 17 then on December 19th adopting the environmental impact
- 18 statement, and December 28th issue the record of
- 19 decision and the program amendment decision.
- 20 Our point of contact is Helen Bass.
- 21 She unfortunately couldn't make it here today, although
- 22 she did want to be here.
- 23 And our mailing address, we'll go ahead
- 24 and leave this up with our mailing address, an email
- 25 address where you can send written comments to either

- 1 one of those, and then finally the web site for the
- 2 Alaska program change documents.
- I think we'll go ahead and get started
- 4 with our first speaker.
- 5 MS. OKASAKI: Judy Brady.
- 6 MR. SMITH: Okay.
- 7 UNIDENTIFIED VOICE: Could I ask a
- 8 quick question?
- 9 MR. SMITH: Sure.
- 10 UNIDENTIFIED VOICE: This is the
- 11 format, you want us to come to a microphone and stand
- 12 up?
- MR. SMITH: Well, whatever you feel
- 14 comfortable with. I think....
- 15 UNIDENTIFIED VOICE: Some folks have
- 16 notes and it's easier to sit and talk than it is.....
- 17 MR. SMITH: Okay. Well, we can do
- 18 that. I guess -- will you hear a microphone....
- 19 REPORTER: (Indiscernible, away from
- 20 microphone)
- 21 MR. SMITH: ....(indiscernible)?
- 22 REPORTER: Yeah, if they want to sit,
- 23 you can probably move them up to the front table.
- MR. SMITH: Okay. Good. Come right up
- 25 there.

- 1 MS. OKASAKI: Also then if people are
- 2 throwing things at you, you can duck. You can see it
- 3 coming.
- 4 MS. BRADY: Is this mike on? Yes.
- 5 Good morning. My name is Judy Brady and I'm the
- 6 Executive Director of the Alaska Oil and Gas
- 7 Association. AOGA is leased to have this opportunity
- 8 to provide comments to the Office of Ocean and Coastal
- 9 Resource Management on the scope of the ACMP amendments
- 10 environmental impact statement. AOGA is a private,
- 11 nonprofit trade association whose 18 member companies
- 12 account for the majority of oil and gas exploration,
- 13 development, production, transportation, refining and
- 14 marketing activities in Alaska.
- 15 AOGA supports the state of Alaska's
- 16 analysis, most recently contained in its June 2nd, 2005
- 17 amendment submittal to OCRM, that the ACMP amendments
- 18 comply with the requirements of he Coastal Zone
- 19 Management Act and its implementing regulations.
- 20 When the Alaska Coastal Management Act
- 21 was passed by the legislature in 1977, the same year by
- 22 the way the Clean Water Act was passed by Congress, the
- 23 comprehensive body of federal and state environmental
- 24 laws and regulations was still being developed and were
- 25 not fully in place. Title 29 planning and zoning

- 1 ordinances and the regulations of a number of Alaska
- 2 local governments were also in their infancy at that
- 3 time. Today, the federal and state statutory and
- 4 regulatory framework addresses many of the
- 5 environmental and development concerns the ACMP was
- 6 originally intended to address. One of the catalysts
- 7 for passage of H.B. 191 and the other ACMP amendments
- 8 was the fact that the ACMP had been overtaken by other
- 9 federal, state and local regulatory authorities. The
- 10 overlap between the ACMP and other regulatory
- 11 authorities is the most significant fact for OCRM to
- 12 consider as it conducts its analysis of the
- 13 environmental impacts of the ACMP amendments.
- 14 The level of environmental protection
- 15 of coastal resources has not changed as a result of the
- 16 ACMP amendments. Rather, duplication, complexity and
- 17 uncertainty have been removed from the ACMP. And in
- 18 fact some of this duplication and uncertainty
- 19 threatened the program itself. The focus has changed
- 20 to ensure that matters of local concern, not otherwise
- 21 addressed by the larger body of federal and state laws,
- 22 drive the development-specific coastal resource
- 23 protection measures and requirements for development
- 24 projects. The resulting permitting efficiency and
- 25 clarity fully comport with the CZMA mandates and

- 1 regulations to make coastal management work in unison
- 2 with state and local programs. In our written comments
- 3 we will include a list of laws of laws and regulations
- 4 that may apply to development projects in Alaska that
- 5 demonstrate the above comments on the comprehensive
- 6 Alaska regulatory framework. OCRM should carefully
- 7 analyze that list in considering the environmental
- 8 implications of the ACMP reforms.
- 9 Today, a major resource development
- 10 project located in the coastal zone may require on the
- 11 order of three dozen permits and authorizations from
- 12 federal, state and local government agencies. Layered
- 13 on top of all of these permits are the often
- 14 duplicative provisions of the ACMP, which mandates that
- 15 certain of these federal and state permits, excluding
- 16 now ADEC under the reforms, cannot be issued until they
- 17 are found consistent with the standards of the ACMP and
- 18 applicable coastal district enforceable policies.
- 19 These standards and policies often triggered an
- 20 unnecessary second look at issues already regulated
- 21 under other federal and state law and regulations.
- 22 H.B. 191 and its implementing regulations address this
- 23 duplication and complexity by establishing bright lines
- 24 for the scope and applicability of consistency reviews.
- The ACMP is not a permitting program,

- 1 but over the years its administration and litigation
- 2 risks have made it appear so. This concern was another
- 3 reason for the passage of H.B. 191. Prior to the
- 4 passage of H.B. 191, over the years the ACMP had become
- 5 a cumbersome complex process that hindered timely
- 6 issuance of permits. In order for the state agencies
- 7 to carry out their duties under the ACMP, rather than
- 8 being able to rely on regulations published under state
- 9 law and with public comment, they had to rely on a
- 10 series of more and more complex interagency memos that
- 11 were not open to the public. The state standards
- 12 duplicated federal and state law and many district
- 13 policies duplicated the requirements of both state
- 14 policies and certain federal and state regulatory
- 15 programs. This overlap led to confusion and compliance
- 16 complexity, particularly on the state side. The
- 17 permitting schedule under ACMP has become the victim of
- 18 the slowest permit.
- 19 AOGA supported H.B. 191 because it
- 20 simplified the ACMP process. Most importantly, it
- 21 recognized the significant evolution of environmental
- 22 protection provided by federal and state regulatory
- 23 programs since the inception of the ACMP. We all need
- 24 to remind ourselves that ACMP does not stand alone. It
- 25 is not the sole protection for coastal resources in

- 1 this state. It is a program that marries the already
- 2 in-place state, local and federal environmental
- 3 concerns. And in this state in particular, the
- 4 legislature and the federal agencies and the local
- 5 governments spend a good deal of time taking a look at
- 6 coastal resources and making sure they are protected.
- 7 In particular, it made ADEC permits and authorizations
- 8 automatically consistent upon issuance. These permits
- 9 are (sic) no longer hold up the ACMP review or dictate
- 10 its schedule.
- 11 In addition to H.B. 191 and the new
- 12 ACMP regulations, which are the subject of OCRM's EIS,
- 13 the state also implemented significant reforms with
- 14 respect to ACMP management and the coordination of
- 15 project permitting through the creation of the Office
- 16 of Project Management and Permitting in the Department
- 17 of Natural Resources. these permit streamlining
- 18 reforms fully conform to the coastal management
- 19 regulations specified in 15 CFR Part 923 Subpart E,
- 20 such as clearly defined organizational structure and a
- 21 single agency designated to manage the program.
- 22 The other significant reform provided
- 23 by H.B. 191 was to require districts to revise their
- 24 coastal program policies so that they did not duplicate
- 25 federal or state laws and regulations unless these

- 1 policies relate to a matter of local concern. This
- 2 appropriately refocused the scope of district
- 3 enforceable policies. The definition of a matter of
- 4 local concern is a specific coastal use or resource
- 5 within a defined portion of a district's coastal zone,
- 6 that is first demonstrated as sensitive to the
- 7 environment, second, not adequately addressed by state
- 8 or federal law, and, third, of unique concern to the
- 9 coastal district as demonstrated by local usage or
- 10 scientific evidence. This important refocus allows
- 11 coastal districts to focus on local matters in a
- 12 regulatory arena that is already comprehensive and
- 13 complex. AOGA understands the state has made a major
- 14 effort to assist districts in crafting policies that
- 15 meet the requirements of H.B. 191 and the new ACMP
- 16 regulations and the districts have secured through
- 17 legislation an extension to revise their plans, which
- 18 AOGA supported.
- 19 AOGA's support of the permit
- 20 streamlining and permit management benefits of the ACMP
- 21 does not mean that our members' commitment to
- 22 environmentally responsible development and full
- 23 consultation with those affected by our activities has
- 24 changed. This regulatory reform focus appears to have
- 25 been lost in the debate over the ACMP amendments. The

- 1 role of coastal districts in the permitting process is
- 2 unchanged. Permits cannot be issued without an
- 3 affirmative consistency finding. Further, with the
- 4 exception of ADEC's regulatory authorities, coastal
- 5 district management programs may still designate areas
- 6 of specific use or resource values and develop
- 7 enforceable policies to address those uses and
- 8 resources.
- 9 We understand that the purpose of this
- 10 comment opportunity to assist OCRM in its determination
- 11 of what needs to be addressed in the EIS. For the
- 12 reasons mentioned in my testimony, we believe that the
- 13 only change in the status quo that will result from the
- 14 ACMP amendments will be a better functioning permit
- 15 system. If this improved process results in any on-
- 16 the-ground impacts, it will have everything to do with
- 17 a more efficient permitting system and nothing to do
- 18 wit the alteration of any environmental standards.
- 19 Thank you for the opportunity to
- 20 comment. And I'll have two -- I have copies for
- 21 whoever would like them. Thank you.
- MS. OKASAKI: Yes, we'd like a copy.
- 23 Thank you, Judy. Next would be Marv Smith.
- 24 MR. SMITH: Thank you for the
- 25 opportunity to comment today. My comments are not

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- 1 We feel that we're -- the local control
- 2 that House Bill 191 was supposed to implement is not
- 3 there, and we want to write policies that are
- 4 meaningful.
- 5 The biggest concern we have is the
- 6 freshwater lakes of the state. We have -- do not have
- 7 the same protection that we had before under our
- 8 policies. It's just not there, and it's going to be
- 9 difficult. And we're trying to write policies,
- 10 specifically on Lake Iliamna, under the new guidelines,
- 11 but we're at the state's mercy whether or not they
- 12 approve those policies or not. And we don't know
- 13 whether they'll approve them or not.
- 14 We're doing the EIS before we get those
- 15 policies finalized, you know, and so the cart's in
- 16 front of the horse. And we feel that the time frame
- 17 for this to get it done is just very detrimental to us
- 18 to try to make sure that everything is protected.
- 19 And we strongly encourage this EIS when
- 20 you evaluate it to look at the impacts of the changes
- 21 to how it's doing subsistence -- how subsistence is
- 22 being effected. That really needs to be looked at. I
- 23 strongly urge that.
- In addition, we urge you look at how
- 25 the habitats, the habitat standards are written. Those

- 1 standards are changed dramatically from what they were.
- 2 Under the new standards, mining is removed from coastal
- 3 management. Energy facilities. And we feel that the
- 4 evaluation of those needs to be looked at tremendously.
- In addition, reduced local control.
- 6 The local control we had there before, you know, that
- 7 alone is the key thing of the Coastal Management
- 8 Program. It was implemented from the people, the
- 9 citizens of Alaska, in the districts, and we make the
- 10 coastal zone of Alaska work, from the grounds up at the
- 11 local level. Without that, the program has no merit.
- 12 And that is the key to this. And we strongly urge the
- 13 EIS to look at that and how it is.
- 14 Air, land and water quality issues have
- 15 been taken out, and we do not feel that that, in the
- 16 way it's done -- how can you do an evaluation of
- 17 coastal management and not include air, land and water
- 18 quality in that? It's almost impossible.
- 19 Those are the things that we strongly
- 20 urge that the EIS review, and the cumulative impacts of
- 21 those and how they're affecting.
- There's some strong definition changes
- 23 in the new regulations that have taken away many things
- 24 that no longer were there. And we'd urge you to look
- 25 at those definitions of how they are explained, and how

- 1 they affect the overall impact later on. I'll have a
- 2 final written copy to be turned in by August the 5th
- 3 from the borough, and thank you.
- 4 MS. OKASAKI: Thank you, Mr. Smith,
- 5 (indiscernible, away from microphone). Tom.
- 6 MR. LOHMAN: Thank you. Doesn't Marv
- 7 look good sitting in the front of a room? Sense of
- 8 security.
- 9 My name is Tom Lohman. I'm with the
- 10 North Slope Borough. It's a privilege to be here again
- 11 and talk about the ACMP, something very important to
- 12 the North Slope. I believe you heard from our mayor in
- 13 Barrow on Monday, who had to come in from his
- 14 subsistence camp to participate in this process. And
- 15 that alone should be an indication of how significant
- 16 subsistence is to the folks on the North Slope, but
- 17 also how important this program is that the mayor would
- 18 leave his subsistence camp where he was gathering food
- 19 for his family and relatives, and come in and talk
- 20 about this.
- 21 First, let me say I hope you understand
- 22 how insane your schedule is. You went over that very
- 23 quickly, and some of us were chuckling, but that was
- 24 only to keep from crying I suppose. Three weeks to
- 25 draft a draft EIS is simply ridiculous, and I know it's

- 1 not your fault, but just make a note of that.
- The EIS process is all about impacts.
- 3 First, whether additional impacts to the physical,
- 4 biological, or human environment will result from the
- 5 state's amendment to the program, and second what and
- 6 how significant those impacts will be.
- 7 The answer to the first question, of
- 8 course, is, yes, there will be additional impacts to
- 9 the environment. That essentially was the intended
- 10 result of the administration when it began this
- 11 process. It was intended that the changes to the
- 12 program would allow for more development within and
- 13 adjacent to the state's coastal zone, and that the
- 14 development would occur faster with fewer regulatory
- 15 hurdles to overcome and with a drastically reduced
- 16 ability of local communities to reject or shape that
- 17 development.
- 18 There's no such thing as impact-free
- 19 development. The state wants more development in the
- 20 coastal zone and has amended the ACMP to allow that
- 21 development to occur. There will be more impacts to
- 22 the resources and the competing uses of the coastal
- 23 zone as a result of this amendment.
- 24 Will these additional impacts be
- 25 significant and harmful? Yes, they will be. They will

- 1 certainly be above and beyond the level that local
- 2 districts and the communities we represent want and
- 3 think is appropriate. I know that, because despite the
- 4 rhetoric and unsupported claims of a program out of
- 5 control, the old ACMP was working. In most of, if not
- 6 all of coastal areas, including the North Slope, the
- 7 old ACMP was a critical tool in approaching an
- 8 appropriate if delicate balance between industrial
- 9 development and competing uses and values.
- 10 That is not to say that irreversible
- 11 industrial impacts have not already occurred in some
- 12 regions, including the North Slope. This EIS must
- 13 incorporate the findings of the 2003 National Research
- 14 Council report on the cumulative effects of oil and gas
- 15 activities on the North Slope of Alaska. Among other
- 16 findings, the researchers found that piecemeal
- 17 development and permitting had resulted in significant
- 18 social and cultural impacts to our largely Inupiat
- 19 population, and regulatory structures should be
- 20 strengthened to prevent further impacts.
- 21 The wholesale changes embodied in the
- 22 proposed ACMP amendment, however, take the program in
- 23 the opposite direction. They will, and I again stress
- 24 are intended to, upset whatever semblance of balance we
- 25 had to an unbalanced state favoring development.

- 1 Let's talk about specifically some
- 2 issues that should be analyzed in the EIS. First,
- 3 social and cultural stresses. Our mayor has talked
- 4 frequently about the idea that stresses are occurring
- 5 in our communities, and those are causing all kinds of
- 6 cultural ills that plague our small rural communities.
- 7 The changes to the ACMP, and especially the drastically
- 8 reduced local role in management of coastal
- 9 development, will increase the sense of
- 10 disenfranchisement and powerlessness of many coastal
- 11 residents who have already experienced significant
- 12 disruption of traditional lifestyles and livelihoods.
- 13 This is not an insignificant impact, and is being felt
- 14 in our communities. When we talk about the changes to
- 15 this program in our communities where they are
- 16 knowledgeable of this program, people are already very
- 17 upset. They've been upset for two years and they're
- 18 going to be more upset when they see what our final
- 19 revised district plan looks like.
- 20 Let's talk about traditional knowledge.
- 21 By removing the local component of the program, the
- 22 state is turning its back on the wealth of traditional
- 23 knowledge that exists among the residents, and
- 24 particularly the native residents of Alaska's hundreds
- 25 of coastal communities. Traditional and contemporary

- 1 local Inupiat knowledge of the North Slope environment,
- 2 including offshore areas used for subsistence, is drawn
- 3 from both the experiences of elders and from ancestors
- 4 and current residents who travel through the region.
- 5 The ability to safely utilize these areas today and to
- 6 survive as a culture depends on the attention to and
- 7 respect for this traditional knowledge. By removing
- 8 the consultative component of this program, the part
- 9 that worked best when industry came to the North Slope
- 10 in advance of developing activities and exploration
- 11 activities, because they knew we had a coastal
- 12 management program with strong local components. That
- 13 part is now gone, the part that gets them to our table,
- 14 to our table, not to this mysterious the table that
- 15 everybody talks about, including the state and
- 16 everybody else.
- 17 We had a forum in Barrow where people
- 18 would come to Barrow and to our communities and talk to
- 19 us about programs, because we had a coastal management
- 20 program with local enforceable polities. And that's
- 21 what gets lost in the statistics, the idea that things
- 22 got worked out beforehand, because the local component
- 23 existed. With the local component gone, there is no
- 24 incentive for industry to come sit and talk with us
- 25 directly outside of any formal regulatory process.

- 1 Let's talk about the IWC, the
- 2 International Whaling Commission. The International
- 3 Whaling Commission recently has shown a tendency to act
- 4 proactively to protect endangered whale stocks when
- 5 they perceive a threat. The IWC has no authority to
- 6 restrict industrial operations in Alaska or offshore in
- 7 federal waters in Alaska. But they can reduce the
- 8 subsistence harvest quota if that's the only means they
- 9 see of providing enhanced protection to a threatened or
- 10 endangered whale stock. The IWC may see the expansion
- 11 of leasing and development allowed by this amended
- 12 coastal management program as an enhanced threat to the
- 13 bowhead whale and may act accordingly. That is not
- 14 insignificant, and it is not unreasonable to think
- 15 that, and that ought to be analyzed in the EIS.
- 16 There was a resolution put out by the
- 17 IWC last year dealing with threats to a different whale
- 18 stock. I believe it was the North Atlantic right whale
- 19 stock. And they issued a very strongly worded
- 20 resolution saying action must be taken to protect this
- 21 stock independent of their -- independent of what was
- 22 taking place in the area. They needed to act in the
- 23 only way they can, which is to reduce harvest quotas
- 24 and impose other restrictions.
- 25 The loss of the bowhead whale

- 1 subsistence harvest quota, or a portion of the harvest
- 2 quota would be a significant cultural impact to the
- 3 people of the North Slope and the people of the Bering
- 4 Straits that harvest those animals.
- 5 Let's talk about coverage gaps. Marv
- 6 talked about it a little bit. There is this idea that
- 7 the things that have been removed in terms of
- 8 protection from the coastal management program are
- 9 merely redundant of other regulatory schemes. That is
- 10 I think demonstrably not true. We've made this case
- 11 many, many times, and I hope we'll make it again by the
- 12 5th when we provide our written comments. But I think
- 13 the EIS needs to analyze where the loss of protections
- 14 in this amendment are not picked up, or could not be
- 15 picked up by local or state regulatory processes or
- 16 federal processes.
- 17 There's this idea that the
- 18 municipalities, those of us in the districts that are
- 19 backed up by municipal governments, and some districts
- 20 are not, that we can somehow fill those gaps with our
- 21 Title 29 municipal planning authority, and that is not
- 22 true. Specifically, on the North Slope, that is not
- 23 true with respect to vast areas of federal land and the
- 24 federal waters which are so important to the people of
- 25 the North Slope. That needs to be analyzed. We've

- 1 requested of the state, now for I guess getting close
- 2 to two years a sit down meeting specifically to talk
- 3 about the OCS, the outer continental shelf, and exactly
- 4 what we can do in terms of influencing activities that
- 5 occur there, and we've never had that meeting. And, to
- 6 be honest, I'm still not clear what we can do in that
- 7 area. And we're not clear how a specific project, for
- 8 instance, would work its way through this system as
- 9 different than it would have worked its way through the
- 10 system under the old ACMP.
- 11 Subsistence, and in particular issues
- 12 relating to access to subsistence resources. It
- 13 doesn't really matter if there are enough animals out
- 14 there if the people can't get to them, and in some of
- 15 our North Slope communities that is already the case.
- 16 In the community of Nuiqsut, for instance, which is
- 17 virtually surrounded by oil and gas development, there
- 18 are increasing access problems. The access enforceable
- 19 policy of our current plan perhaps is the one we rely
- 20 on most in sitting down with oil companies and dealing
- 21 with issues relating to proposed activities, how we're
- 22 going to maintain the opportunity for access to those
- 23 resources.
- 24 The EIS must take a look at the state's
- 25 responses to the draft revised plans the districts have

- 1 submitted. In the North Slope plan, for instance, you
- 2 will see that we've lost essentially all of our
- 3 subsistence policies, including the access policy that
- 4 we depended so heavily on. Those policies have been
- 5 lost despite repeated assurances in the legislative
- 6 process and in the public process and in the meetings
- 7 directly between the districts and the state. The
- 8 assurances were given that we would be able to craft
- 9 meaningful enforceable policies on subsistence. And,
- 10 again, when our local residents see that those policies
- 11 are lost, stress results, and a sense of
- 12 disenfranchisement and a sense of powerlessness
- 13 results.
- 14 The OCS I guess, I'll finish by again
- 15 stressing the importance of the ability of the coastal
- 16 management program, the ability of the local people
- 17 through the coastal management program, to influence
- 18 activities on the federal OCS is absolutely paramount
- 19 to the North Slope, and was really the reason we got
- 20 involved in the coastal management program to begin
- 21 with, because we cannot extend our Title 29 authorities
- 22 out to federal waters. Having a coastal management
- 23 program that dealt with OCS activities and activities
- 24 that occurred on the OCS allowed us some seat at the
- 25 table. And again, it isn't this mythical table that

- 1 occurs outside of the North Slope. It meant that oil
- 2 companies came and talked to us. The most successful
- 3 relationships we have with industry are the ones where
- 4 they come with coastal management program and our land
- 5 management regulations in hand and sit down far in
- 6 advance of when a project is permitted and talk about
- 7 how they're going to meet the requirements of those
- 8 policies. And again, it is not to say that the
- 9 companies will not continue in good faith to do that,
- 10 but there is no stick that requires them to do that any
- 11 more.
- 12 And we all know that in Alaska,
- 13 individuals affect how big groups, big companies, big
- 14 governments, big agencies behave. And while we may
- 15 have good intention people sitting in the highest
- 16 offices of industry now, we may not have as well
- 17 intentioned people in the future. And it is to our
- 18 great advantage to have embodied in a written body of
- 19 law, coastal management in this case, requirements that
- 20 people come and talk to us. And, again, our budget is
- 21 going down drastically. Our ability to get out of
- 22 Barrow, to get out of the North Slope communities,
- 23 particularly the smaller communities, and have those
- 24 conversations in the halls of power in Juneau and
- 25 Anchorage and D.C. are shrinking. We need to have

- 1 people come talk to us on our terms with our program in
- 2 hand. And it is pretty clear to us, if you look at the
- 3 revised draft plan comments, that we have lost that
- 4 ability.
- We also hope to have written comments
- 6 finalized by the 5th, and we'll get into some more
- 7 detail on some of these points. And I thank you for
- 8 your time today.
- 9 MS. OKASAKI: Thank you, Tom. Karol.
- 10 MS. KOLEHMAINEN: I'll try not to be
- 11 nervous.
- 12 MS. OKASAKI: Try not to be nervous.
- MS. KOLEHMAINEN: Yes.
- MS. OKASAKI: We're friendly here.
- MS. KOLEHMAINEN: Are you?
- MS. OKASAKI: You bet.
- MS. KOLEHMAINEN: That's true. Good
- 18 morning, everybody. I'm Karol Kolehmainen,
- 19 representing Aleutians West Coastal Resource Service
- 20 Area, and I want to recognize my chairman is here,
- 21 Frank Kelty from Unalaska.
- 22 I'm just going to read my formal
- 23 comments that I have.
- 24 The following comments are provided
- 25 regarding the subject EIS and are intended to be our

- 1 formal comments on the amended program. It is
- 2 important to receive these comments in the context of
- 3 what they represent. The Aleutians West Coastal
- 4 Resource Service Area board speaks for the coastal
- 5 program for the entire western Aleutian area from
- 6 Unalaska Island west to Attu Island, an area roughly
- 7 that is 20 to 60 miles in width, and roughly 1,000
- 8 miles long. It is bounded by the Pacific Ocean to the
- 9 south and the Bering Sea to the north, and it has a
- 10 wealth of natural resources, including some of the
- 11 richest fishing grounds in the state and the nation.
- 12 Like the geography, the communities of
- 13 the region are also diverse. Unalaska, which has been
- 14 the number 1 seafood processing port in the nation for
- 15 many years, has a resident population of over 4,000
- 16 people, and Nikolski, a tribal government, has 39.
- 17 Both of these communities along with Atka, which is
- 18 around 100 people population, contribute members to the
- 19 AWCRSA board.
- 20 Please consider our comments.
- 21 Under the ACMP, communities address
- 22 local coastal issues through our coastal district
- 23 management plans. In 203, the Alaska legislature
- 24 passed H.B. 191 that substantially revised the state's
- 25 coastal management program. We understand the program

- 1 changes were to accomplish the following: provide
- 2 clear and concise guidance; provide greater uniformity
- 3 in coastal management regulations throughout the state;
- 4 relate to matters of local concern; and not duplicate
- 5 state and federal legislation.
- 6 All the local coastal district plans
- 7 are in the process of revision to meet the requirements
- 8 of H.B. 191, and since July of last year our district
- 9 has been working with the state to amend our program
- 10 and craft acceptable policies. However, while we've
- 11 been working diligently, and I assure you we have been
- 12 working very diligently, at our program revision, we
- 13 have found the process complicated by regulations that
- 14 are not clear and concise, but rather inadequate,
- 15 conflicting, and unclear. The program amendment and
- 16 adopted regulations have eroded the previous ACMP
- 17 framework into a spider web of complex and conflicting
- 18 requirements, prohibitions, and definitions that have
- 19 left local coastal districts hanging by a thread. I
- 20 really like that analogy, it's like one of my
- 21 favorites. we have several specific concerns regarding
- 22 the changes to the ACMP.
- The amended program involves a major
- 24 overhaul of the statewide standards. Several of the
- 25 standards are eliminated, removing them from statewide

- 1 purview, and a number of other standards are
- 2 substantially weakened. Some specific standards, such
- 3 as recreation and subsistence, only have substance
- 4 through the local coastal district programs as there
- 5 are no implementing authorities within the state. It's
- 6 necessary for local coastal district programs to
- 7 designate these areas to be able to subsequently
- 8 develop policies that would apply within the designated
- 9 boundaries. Since the revision and subsequent to the
- 10 state review of our draft amended plan, we have been
- 11 unable to craft an enforceable subsistence policy that
- 12 is acceptable to the state.
- 13 Additionally, and this is part of our
- 14 hard work we've been doing on our plan, the AWCRSA has
- 15 requested a legal interpretation from the state on
- 16 whether we even have the regulatory authority to
- 17 designate areas without borough status. We do not have
- 18 Title 29 authority in the CRSA areas. The state has
- 19 agreed that the question deserves an opinion from the
- 20 attorney general. The results of this determination
- 21 could have significant consequences for designations in
- 22 vast areas of the coast located in the unorganized
- 23 areas of the state. Prior to the revision of the
- 24 coastal program, local policies had blanket
- 25 applicability throughout the district and would be

- 1 considered during federal activities.
- 2 The coastal program should allow
- 3 districts to address upland areas important to wildlife
- 4 and other coastal resources as it has in the past. The
- 5 habitat standard defers greatly to water quality
- 6 issues, which are DEC territory, but it does not
- 7 provide a mechanism to address fishery resources that
- 8 are important. While water quality is certainly one
- 9 factor, it's not the only factor that should be
- 10 considered.
- In another example, moving historic,
- 12 prehistoric and archaeological resources to subject
- 13 uses removes these areas from state purview and could
- 14 prove detrimental to these irreplaceable resources. By
- 15 way of explanation, we have a lot of archaeological
- 16 sites in the -- that are identified within the Aleutian
- 17 area, but many sites are likely to occur in certain
- 18 geographical locations, but they have not been
- 19 identified. You can imagine the complexity of trying
- 20 to designate every archaeological site in the western
- 21 Aleutians.
- 22 Also, the mining and mineral processing
- 23 standard is gone and not replaced with a subject use or
- 24 any other planning mechanism. Mining activities can
- 25 have significant effects on coastal uses and resources,

- 1 and this activity should continue to be addressed by
- 2 the ACMP.
- 3 Matters regulated by the Alaska
- 4 Department of Environmental Conservation have been
- 5 removed from the previous ACMP review process and there
- 6 now exists a prohibition for districts to establish
- 7 policies for air and water quality issues. It was
- 8 suggested during the review of our amended plan that
- 9 even advisory policies or any language at all relating
- 10 to any sort of air, water quality, landfill, any kind
- 11 of DEC-type issue be reworded to not contain any sort
- 12 of phrasing that would be in a DEC regulation. AWCRSA
- 13 is opposed to the fractioning out of DEC regulated
- 14 matters and asserts that such an action will make it
- 15 impossible to consider the full effects of a project
- 16 and can potentially result in increased impacts to
- 17 coastal resources. We have found the single-agency
- 18 ACMP reviews coordinated by DEC to be problematic and
- 19 essentially symbolic since passage of H.B. 191.
- 20 Through the amended program, the
- 21 state's created confusion an nearly impossible
- 22 threshold for a local coastal district to raise a
- 23 matter of local concern and write local policies.
- 24 We've heard a lot of discussion about this. I'm going
- 25 to give you guys some numbers. The AWCRSA began our

- 1 amendment process with 41 enforceable policies. And I
- 2 want to add that those policies survived the four-year
- 3 revision of our plan that we were in the process of
- 4 completing when this amendment began. Last 16 -- or,
- 5 last July 16 policies were recommended for deletion as
- 6 part of our evaluation of our plan with the remainder
- 7 requiring documentation, rewording, or incorporation of
- 8 acceptable elements into other retained policies. With
- 9 this goal in mind, the AWCRSA completed the policy
- 10 revisions, and then we received regulatory
- 11 interpretations where it became apparent that
- 12 additional revisions would be required. the additional
- 13 revisions were completed and the draft document
- 14 submitted for review. As a result of comments received
- 15 from the state, the draft document was further cleansed
- 16 of five additional unacceptable policies. The AWCRSA
- 17 amended coastal management plan now contains a total of
- 18 14 enforceable policies from our original 41. And we
- 19 actually have a couple of areas where we no longer have
- 20 policies that survive, including habitat.
- 21 The local component is one of the
- 22 primary mechanisms for implementing a state coastal
- 23 program. State agencies have historically relied on
- 24 local expertise in making consistency determinations
- 25 and applicants depend on knowledgeable participants in

- 1 the review process. The elimination of our ability
- 2 toto construct enforceable policies will preclude us
- 3 from meaningful participation in the consistency review
- 4 process. This can only result in a shortchanging of
- 5 the applicant and the local citizens represented by our
- 6 coastal district.
- 7 And in my concluding comments, we do
- 8 feel it's paramount to continue to retain a coastal
- 9 management program that complies with federal law and
- 10 meets the needs of the Alaskans represented by our
- 11 local coastal district. The residents of the AWCRSA
- 12 desire a working partnership with the state and federal
- 13 agencies and meaningful participation in the
- 14 consistency review process. While we do not agree that
- 15 the current amended program provides clear and concise
- 16 guidance, provides greater uniformity in coastal
- 17 management regulations throughout the state, or
- 18 adequately relates to our matters of local concern, we
- 19 do desire a continued role in the coastal process, and
- 20 that can only come through federal approval of an
- 21 amended program.
- 22 We appreciate the opportunity to
- 23 comment and we trust your process will result in a
- 24 successful conclusion that will ultimately be
- 25 satisfactory to all parties. Thank you.

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1
                    MS. OKASAKI: (Indiscernible, away from
   microphone)
 3
                    MS. KOLEHMAINEN: You're welcome.
 4
                    MS. OKASAKI: (Indiscernible, away from
    microphone) he didn't want to talk at this time. Would
    anyone else like to speak? Okay. Thank you. We will
   be here until 5:00 o'clock today, so.....
 8
                   UNIDENTIFIED VOICE: I have a question.
 9
                   MS. OKASAKI: Yes.
10
                   UNIDENTIFIED VOICE: On the schedule of
11 September for the EIS.....
12
                   MS. OKASAKI: Uh-huh.
13
                   UNIDENTIFIED VOICE:
14 ....(indiscernible, away from microphone) is it public
15 review (indiscernible, away from microphone)?
16
                  MR. SMITH: Yes, (indiscernible, away
17 from microphone).
18
                   (Indiscernible, away from microphone
19 and simultaneous speech)
20
                  MS. OKASAKI: It just says....
                  UNIDENTIFIED VOICE: ....hold public
21
22 hearings in Alaska (indiscernible) September.....
23
                  MS. OKASAKI: Right.
24
                  UNIDENTIFIED VOICE: Do you have dates
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25 for those or....

1 MS. OKASAKI: No. 2 UNIDENTIFIED VOICE: .... (indiscernible, away from microphone). 3 4 MS. OKASAKI: No. (indiscernible, away from microphone and simultaneous speech) 5 6 (Off record) 7 (On record) 8 MR. DeVALPINE: Hey, Randy. I just want to get comfortable here for a few minutes. 10 Kidding. 11 My name is Andrew DeValpine. I'm the 12 director of the Bristol Bay Coastal Resource Service 13 Area. It's based in Dillingham, Alaska, southwest of 14 Anchorage at the top of Nushagak Bay. We have 492 15 miles of coastline, but our district extends inland 16 quite a bit. We have a few watersheds. Our one 17 watershed on the east side of our district is larger 18 than the state of Vermont. We have the Togiak National 19 Wildlife Refuge to the west, and it's larger than 20 Connecticut and Rhode Island combined. That does not 21 even include the Wood-Titchik State Park which is the 22 largest state park in the nation, 1.6 million acres. 23 These watersheds support economically 24 valuable commercial and sport fisheries, salmon in

25 particular. Regarding sport fisheries, people go for a

- 1 variety of other species. It's also especially
- 2 valuable for subsistence use, not just for fish, but
- 3 for moose, caribou, marine mammals like walrus, seals.
- 4 Offshore are these rich feeding grounds for beluga and
- 5 gray whales as well as sea lions, walrus and seals.
- I thought in terms of scoping I wanted
- 7 to just read from the beginning of House Bill 191.
- 8 It's the bill that set all these changes in motion that
- 9 we're addressing, and that you'll be addressing.
- 10 At the beginning it gives some reasons
- 11 as to why the ACMP needed to be revised. It said, the
- 12 Alaska Coastal Management Program is intended to
- 13 function with a minimum of delay, and avoid regulatory
- 14 confusion, costly litigation and uncertainty regarding
- 15 the feasibility of new investment. It also said,
- 16 there's a need to update and reform existing statewide
- 17 standards of the ACMP so that they are clear and
- 18 concise and provide needed predictability as to the
- 19 applicability, scope and timing of the consistency
- 20 review process under that program. Finally, it said,
- 21 there's a need to update and reform the coastal
- 22 management plans under the ACMP so that the local
- 23 enforceable policies within those plans are clear and
- 24 concise, provide greater uniformity in coastal
- 25 management throughout the state, relate to matters of

- 1 local concern, and do not duplicate state and federal
- 2 requirements.
- 3 So I was rereading that, and I thought
- 4 in terms of scoping it seems to me an EIS analysis of
- 5 this ACMP amendment should take as its starting point
- 6 these words and ground truth some of the claims and
- 7 assertions, because I remember when it came out, a lot
- 8 of time has past, but I read that, and at least for our
- 9 area a lot of these things didn't apply. And a some of
- 10 the grumbling I heard, you know, from around the
- 11 districts in the state, people with longer history than
- 12 me, I've only been in this about four years, also
- 13 question, you know, the premises that the whole thing
- 14 was based on.
- So I think a scoping of the potential
- 16 effects brought about by the changes to the ACMP should
- 17 begin with an assessment of these claims. I think they
- 18 should be documented, what -- how the ACMP held up
- 19 projects through regulatory confusion, using some of
- 20 the words in the House Bill 191, document litigation
- 21 that arose from issues brought up through the ACMP in
- 22 particular, you know, not just permitting in general,
- 23 document delays. And if you find projects that the
- 24 ACMP specifically held up through confusion or whatnot,
- 25 show how and why those projects were held up, show how

- 1 the new program as it's being proposed would have
- 2 changed the picture, how it would have affected what
- 3 ended up happening ultimately. And I would like to see
- 4 a percentage of all the projects that went through the
- 5 ACMP, percentages of what projects were actually held
- 6 up because of ACMP confusion or Byzantine dealings or
- 7 whatever.
- 8 A couple of other words that come up in
- 9 the House Bill 191 that I just read are predictability
- 10 and confusion. I guess I would consider these perhaps
- 11 issues with the old ACMP, and I think the EIS might see
- 12 whether or assess or study, propose is if the amended
- 13 program as it's described is less confusing, and hence
- 14 is it more predictable. And I think a flow chart
- 15 perhaps delineating the old consistency review process
- 16 next to the new amended one might be instructive.
- Just a few other points I wanted to
- 18 bring up, just not necessarily in a coherent order, but
- 19 things I thought would be worthwhile to look into or
- 20 assess. It talks about predictability. If the -- if
- 21 this amended program were to prove to be more
- 22 predictable, what does it mean for the developed
- 23 environment? Is it possible to provide predictability
- 24 and uniformity while at the same time relating to
- 25 matters of local concern? That's one of the pegs, the

- 1 matters of local concern test, one of the pegs that we
- 2 as local districts have to hang our policies on. To
- 3 me, the old program, which was more decentralized, gave
- 4 more emphasis to district policies and plans and local
- 5 input, provided quite a bit more flexibility in terms
- 6 of dealing with issues as they came up. So I'm just
- 7 wondering, you know, if there's a built-in tension here
- 8 that perhaps is problematic I guess. Anyway, it would
- 9 be nice to see an assessment of that, or that
- 10 investigated.
- 11 Regarding centralization and
- 12 decentralization, it seems the amended program does aim
- 13 to centralize the ACMP. I think it would be worthwhile
- 14 for the EIS to assess the reduced local role of local
- 15 districts. And in doing so, in assessing this, will it
- 16 negatively affect the environmental bottom line when
- 17 decisions are made on development in a given district,
- 18 but with diminished local considerations.
- 19 As a side note to that, you know,
- 20 there's this element in the regulations about allowing
- 21 or disallowing uses, which seems to me I guess, just
- 22 addressing the EIS, I think you should assess also the
- 23 effects of what that means. Again, you know, it could
- 24 put the districts, or it would put the districts I
- 25 think in the uncomfortable position at times of not

- 1 having much wriggle room if in fact they wrote policies
- 2 disallowing certain uses, where, in fact, if there was
- 3 some more flexibility, a use might be allowable, but
- 4 there's not -- there doesn't appear to be anyway a lot
- 5 of give and take there.
- 6 Also along these lines, the issue of
- 7 environmental justice has been brought up. Again I
- 8 bring this up in connection with the centralized versus
- 9 decentralized program. That perhaps should be looked
- 10 into, especially -- well, I mean, looking from our
- 11 area, at our perspective, where we might have
- 12 significant industrial development in the future in a
- 13 region that is heavily dependent on subsistence
- 14 resources and the watershed that provides that provides
- 15 all the sustenance for those resources. How would that
- 16 fit in.
- 17 And then what I have noticed in my four
- 18 years there, Fish and Game Habitat Department has used
- 19 our policies quite a bit to back up I guess measures
- 20 that they've put in place on projects, or they've cited
- 21 them anyway. I think an EIS should compare the
- 22 regulatory authorities of the Office of Habitat
- 23 Management and Permitting as they are now called, and
- 24 apparently, you know, they don't really have too much
- 25 in the way of statutes backing them up, or regulations,

- 1 so I'd like to see, you know, what their authorities
- 2 are actually, and compare those with the heft I guess
- 3 that they had through local policies and state
- 4 standards with what OHMP will have with the new
- 5 program.
- 6 I think an EIS should analyze the
- 7 limitations of subject uses as outlined in the
- 8 regulations, if there are limitations. The same with
- 9 habitat areas, and both in conjunction with
- 10 definitions, as there have been new definitions to
- 11 various aspects of the ACMP.
- 12 And I'd also like to call attention to
- 13 one section of 11 AAC 12.300, when they talk about
- 14 important habitats. There's a subpart ii, and I'd just
- 15 like to quote that. It says, important habitats means
- 16 habitats listed in (a)(1) through (8), blah-blah-blah,
- 17 and that is shown by written scientific evidence to be
- 18 significantly more productive than adjacent habitat.
- 19 That's been the subject of some discussion in our
- 20 workshops over these regulations. I'm not sure it's
- 21 been satisfactorily settled, but it seems to me
- 22 important for an EIS to address that as well.
- 23 And that's all I had. Thanks for the
- 24 opportunity to comment.
- MS. OKASAKI: Thank you.

MR. DeVALPINE: No applause?

MS. OKASAKI: Last chance. We still

will be here until 5:00. If you see anybody

(indiscernible, away from microphone).

(END OF PROCEEDINGS)

1	CERTIFICATE
2	
3	UNITED STATES OF AMERICA)
4	)ss.
5	STATE OF ALASKA )
6	
7	I, Joseph P. Kolasinski, Notary Public in and for
8	the state of Alaska, and reporter for Computer Matrix
9	Court Reporters, LLC, do hereby certify:
10	THAT the foregoing EIS Scoping Meeting on the
11	Alaska Coastal Management Plan was electronically
12	recorded by Computer Matrix Court Reporters, LLC on the
13	27th day of July 2005, commencing at the Egan Center in
14	Anchorage, Alaska;
15	That this hearing was recorded electronically and
16	thereafter transcribed under my direction and reduced
17	to print;
18	IN WITNESS WHEREOF, I have hereunto set my hand
19	and affixed my seal this 10th day of August 2005.
20	
21 22 23 24 25	Joseph P. Kolasinski Notary Public in and for Alaska My Commission Expires: 3/12/08

1 2	ALASKA COASTAL MANAGEMENT PROGRAM
3 4	EIS SCOPING MEETING
5	July 25, 2005
7 8	Heritage Center Barrow, Alaska

Recorded and transcribed by:

Computer Matrix Court Reporters, LLC 3522 West 27th Avenue Anchorage, AK 99517 907-243-0668 jpk@gci.net

## PROCEEDINGS

- 2 MR. SMITH: Well, good afternoon to
- 3 everybody. Thank you for coming. I know the weather's
- 4 been nice and a lot of people are out of town, but I'd
- 5 like to thank you for coming, and I guess we'd also
- 6 like to thank Mayor Ahmaogak who I think is going to
- 7 try to make it this afternoon as well. We'd like to
- 8 thank him for inviting us here.
- 9 My name is Odin Smith. I'm an attorney
- 10 with NOAA, National Oceanic and Atmospheric
- 11 Administration. I'm here with Masi Okasaki, who is
- 12 with the Office of Ocean and Coastal Resource
- 13 Management.

1

- 14 And the reason why we're here today is
- 15 basically to hear from you about what concerns or
- 16 questions you might have about the proposed amendments
- 17 to Alaska's Coastal Management Program.
- I guess before we start, I'm going to
- 19 run through a little bit of an introduction to the
- 20 environmental impact review process, which is the
- 21 process we're following as we review whether or not to
- 22 approve these amendments. And then after that we'll
- 23 just open it up to anybody who has comments and we'll,
- 24 of course, accept written comments as well, so I think
- 25 without further ado.....

1 Our environmental impact review process is required under the National Environmental Policy Act, which basically requires that major federal actions significantly affecting the quality of the human environment require the federal agency to evaluate what sort of environmental impacts would be involved in the proposed action, any adverse environmental impacts that cannot be avoided, as well 9 as alternatives to the proposed action, the 10 relationship between short-term uses and long-term 11 productivity of resources, and any irreversible 12 commitment of resources that would be entailed. The NOAA amendment process basically 14 involves taking a look at the amendments that are 15 submitted by the state to its coastal management 16 program. NOAA first makes a preliminary approval 17 determination. This is basically for purposes of 18 continuing funding under the Coastal Zone Management 19 Act. And then we issue a notice of intent to conduct 20 an EIS, which is published in the Federal Register to 21 -- and announce these scoping meetings which are 22 basically an opportunity for the interested public to 23 come and offer their questions or comments or concerns. 24

We will be putting out a draft

25

- 1 environmental impact statement, and provide a comment
- 2 period on that document as well. And we'll be holding
- 3 meetings as well as part of that review process.
- 4 And then finally we will address the
- 5 comments and issue a final environmental impact
- 6 statement. And then finally after 30 days we'll
- 7 actually make a decision on the proposed action,
- 8 whether or not to approve the amendments and issue a
- 9 record of decision.
- Just very briefly, the Alaska program
- 11 amendments involve a couple of statutory changes, and
- 12 then also some regulatory changes, and these were
- 13 enacted by the State and submitted to NOAA for approval
- 14 as part of the program.
- Scoping under NEPA, the purpose is
- 16 simply to allow an opportunity for the public to
- 17 suggest specific issues that should be covered in the
- 18 EIS, basically focusing on, one, what the potential
- 19 impacts are of the proposed action, and then the
- 20 second, what suggested alternatives could be.
- 21 UNIDENTIFIED VOICE: There's some
- 22 batteries at the store.
- 23 MR. SMITH: Alternatives are, of
- 24 course, what the environmental impact statement will be
- 25 comparing. In this case the basic alternatives before

- 1 us are under the Federal Coastal Zone Management Act,
- 2 are either to approve the amendments as part of the
- 3 state's federally approved coastal management program,
- 4 or to not approve the amendments.
- 5 The outline of the EIS will basically
- 6 be an executive summary, an introduction which includes
- 7 a discussion of the scoping and public involvement
- 8 process. There will be a section on the purpose of the
- 9 proposed action and the need for, what alternatives
- 10 there are for it, a description of what the program
- 11 changes entails, a description of the affected
- 12 environment, both physical and socio-economic, and then
- 13 the impacts of those alternatives, and then finally a
- 14 list of agencies and persons consulted in an index and
- 15 appendices.
- 16 The draft EIS schedule for these Alaska
- 17 Coastal Management Program amendments. Basically this
- 18 week we're having scoping meetings. They're scheduled
- 19 here in Barrow, and then we'll be having them on
- 20 Wednesday in Anchorage and Thursday in Juneau. August
- 21 5th will be the close of deadline for comments on
- 22 scoping. Certainly anybody who didn't make it to this
- 23 meeting or doesn't make it to any of the other ones is
- 24 free and encouraged to send in comments in writing as
- 25 well and they will be addressed.

- 1 The draft environmental impact
- 2 statement will be issued, scheduled for August 26th.
- 3 It will be issued for 45 days comment period, and then
- 4 there will be public hearings held on it in September.
- 5 And then the 45-day comment period will end on October
- 6 10th of 2005. We're looking to issue the final
- 7 environmental impact statement on November 18th for 30
- 8 days, and then December 19th adopt the EIS. And by
- 9 December 28th actually issue our record of decision and
- 10 the program amendment approval decision.
- 11 And then finally our point of contact
- 12 for this EIS is Helen Bass. She couldn't make it here
- 13 today for personal reasons, although she did want to be
- 14 here. Her address is up here. I'll just leave this
- 15 contact information up while people are speaking.
- 16 And then finally at the bottom there is
- 17 a web site which has that Alaska program change
- 18 document.
- 19 MR. A. BROWER: On that web site, is
- 20 that (indiscernible, away from microphone) accessible
- 21 for comments to -- for Helen?
- MR. SMITH: No, I don't -- not through
- 23 that web site, although you can send comments to
- 24 Helen's e-mail address, which is.....
- MR. A. BROWER: Oh, that....

- 1 MR. SMITH: Yeah, helen.bass@noaa.gov.
- 2 So I think without further ado we'll go ahead and move
- 3 to the reason why we're here, which is to hear from
- 4 you, and I guess we have a list of people who want to
- 5 speak, and if anybody else hasn't signed up or just
- 6 came in, we have a sign-in sheet here, and you can
- 7 indicate whether you would like to speak or not.
- MS. OKASAKI: From what we've got on
- 9 the list, it looks like there's only one person who
- 10 wants to talk. You can change your mind later. I
- 11 think we'll have plenty of time here to figure it out.
- 12 We have -- we're going to say we have -- everyone will
- 13 have five minutes to talk, and that's because we want
- 14 to make sure when we go to Anchorage and to Juneau
- 15 everybody has the same amount of time. We won't be
- 16 watching the clock that closely, but for all intents
- 17 and purposes, you have five minutes. So, Mr. Brower,
- 18 would you like to (indiscernible).
- 19 MR. A. BROWER: Is that five minutes
- 20 per entity?
- 21 UNIDENTIFIED VOICE: Arnold wears about
- 22 half a dozen different hats, so....
- MS. OKASAKI: Okay. Well, just change
- 24 hats (indiscernible, away from microphone)....
- 25 MR. SMITH: Arnold, if we could get you

- 1 up there, please?
- 2 MS. OKASAKI: Come on up here, so that
- 3 you can be (indiscernible, away from microphone)
- 4 please.
- 5 MR. A. BROWER: You know, I've heard
- 6 about extenuating circumstances and things, but in the
- 7 communities like in Barrow and coastal communities,
- 8 people wear several hats. Several hats. Several
- 9 boards. Several entities. Several governments. But
- 10 right now I'm going to speak on behalf of Mayor george
- 11 Ahmaogak who's the mayor of the North Slope Borough,
- 12 and I'm delighted that you folks have come here to hear
- 13 our things and.....
- 14 Good afternoon. My name is Arnold
- 15 Brower, Jr. I am here on behalf of the mayor of the
- 16 North Slope Borough. I want to talk with you today
- 17 about some of the issues you need to consider as you
- 18 write the EIS for the proposed amendment to the Alaska
- 19 Coastal Management Program.
- 20 But first I want you to know that the
- 21 borough appreciates OCRM holding a scoping meeting here
- 22 in Barrow. And it's important to our community,
- 23 because it gives us a chance to meet you face to face
- 24 and to give you a broad range of local concerns on the
- 25 ACMP proposed amendment. At this time it gives you a

- 1 chance to learn about our people and have better
- 2 understanding of what is most important to us and why
- 3 we feel the way we do. As you know, the mayor is
- 4 roaming the coast at the moment.
- 5 The North Slope Borough has been a very
- 6 active participant in coastal management since the 70s,
- 7 1970s. Based on our years of experience, we have
- 8 serious concerns about the proposed changes and how
- 9 they're going to affect our ability to participate in
- 10 the program. This comprehensive overhaul of coastal
- 11 management reduces protections we had in the past and
- 12 you can be sure it will have significant adverse
- 13 impacts to subsistence, habitats, fish and wildlife,
- 14 and other coastal resources and uses.
- 15 A number of new provisions would reduce
- 16 local control in managing coastal resources and uses.
- 17 Alaska's original program gave us a strong local voice
- 18 in coastal management. The proposed changes would
- 19 diminish this role by cutting back on mechanisms for
- 20 local control. And that's related with the industry
- 21 off shore, and those things that are quite prevalent in
- 22 our activity this moment.
- 23 Probably the worst change in this
- 24 regard is the creation of new restrictions on coastal
- 25 district enforceable policies. Alaska Department of

- 1 Natural Resources has gone to a lot of trouble to
- 2 remove coastal districts from meaningful policy-making.
- 3 Their submittal to OCRM on June 21 lays out a complex
- 4 set of restrictions on the policies. It seems like
- 5 it's written in some sort of code that DNR would
- 6 translate for us after the fact. There are lots of
- 7 vague terms like adequately address, avoid or minimize,
- 8 carve out, and stringent versus specific. It seems to
- 9 me like they're trying to get -- trying to bog us down
- 10 in a swamp of mushy language so we don't -- won't catch
- 11 on to the clear message, the message that coastal
- 12 districts are done with making meaningful policies at
- 13 the local level.
- 14 DNR's June 2nd submittal does not tell
- 15 you the implications of these new restrictions. To
- 16 really understand and respond to DNR's intent, the EIS
- 17 has to include an analysis of the state's response to
- 18 the draft plans of the North Slope Borough and other
- 19 coastal districts. Taking a close look at the document
- 20 will make it clear that under the new ACMP, there is no
- 21 room for effective district policies. Without these
- 22 district policies, coastal resources will be put under
- 23 new pressures that will lead to adverse impacts in the
- 24 absence of local control. This needs to be
- 25 comprehensively addressed in the EIS.

- 1 At the moment we have about 100
- 2 wellheads that are just storm plugged and now eroding
- 3 from Husky's NPRA exploration in the 50s and 60s, and I
- 4 tell you one site in Simpson right now, it's the
- 5 ugliest mess I've seen on there. And the thing about
- 6 it is, it's going to fade away and it's one of the
- 7 reasons why the brandts, the stellar eiders are in a
- 8 dangerously depleted situation as a stock. As a
- 9 species.
- 10 Well, where was I? The proposed
- 11 changes on the statewide standards would seriously
- 12 weaken the current ACMP. In fact the current state
- 13 standards have been so effective that it has not been
- 14 necessary to enact environmental laws that other
- 15 coastal states have had, but if we are saddled with new
- 16 statewide standards that give us less protection, less
- 17 input, if we don't have all of the environmental laws
- 18 that other states fall back on for protection, then
- 19 Alaska's coast will be in trouble. Every change to the
- 20 ACMP that reduces protections for coastal resources
- 21 should have a corresponding discussion in the EIS
- 22 describing how other laws will make up for this loss of
- 23 protection.
- I will mention only a few of the
- 25 proposed changes to the statewide standards, but the

- 1 EIS should investigate the effects of every single
- 2 change.
- 3 DNR has weakened the statewide
- 4 subsistence standard so it only applies to areas
- 5 designated as important for subsistence use. We are
- 6 offended by the description of the subsistence standard
- 7 in the June 2nd submittal. This description says the
- 8 subsistence standard does not include a provision for
- 9 mitigation because a project would never be allowed if
- 10 it had effects that need mitigating. This is a
- 11 dishonest statement, because development projects on
- 12 the North Slope clearly have impacts to subsistence
- 13 that merit mitigation.
- 14 The next item is changes to the
- 15 habitats standards are equally troubling. Since the
- 16 mid '80s the habitat standards has brought together
- 17 applicants, the state and federal agencies and coastal
- 18 districts to create mitigation measures that reduce
- 19 impacts. But the new standard removes those references
- 20 to biological resources, and the DNR has said that only
- 21 matters specifically spelled out i the standard may be
- 22 considered. In other words, for most types of
- 23 habitats, only non-biological matters may be
- 24 considered. This makes no sense.
- 25 Also, districts may only establish

- 1 enforceable policies for areas that are designated as
- 2 important habitat. The regulations impose really
- 3 strict limits on establishing these areas. For
- 4 example, the regs say there must be a direct connection
- 5 between development activities and effects on saltwater
- 6 areas. As a result, upland habitats that don't have
- 7 saltwater areas will lose protection.
- 8 Next is the standard, the new standard
- 9 also removes the three-part sequencing process for
- 10 approving projects that do not maintain or enhance
- 11 habitats. The ability of the stet to address habitat
- 12 issues through our agencies should be evaluated in the
- 13 EIS, especially in light of the fact that the Office of
- 14 Habitat Managements and Permitting has only limited
- 15 authority provided by two very narrow statutes.
- 16 Each of these changes to the other
- 17 statewide standards should be carefully evaluated to
- 18 determine how they will affect coastal uses and
- 19 resources. This includes the statewide mining
- 20 standards which is eliminated the new plan. There are
- 21 also changes to the transportation and utilities
- 22 standards that deserve close scrutiny.
- 23 The removal of matter regulated by the
- 24 department of Environmental Conservation from the
- 25 consistency review process can be expected to have

- 1 detrimental effects on resources and uses in Alaska's
- 2 coastal zone. In theory, air and water quality issues
- 3 can be separated from other coastal management issues,
- 4 but in reality air and water quality are fundamentally
- 5 connected to subsistence, fish and wildlife, habitats,
- 6 and every use or resource of the coastal zone. The
- 7 Inupiat people, the American, United States citizens,
- 8 the Inupiat people, who have a God also, with
- 9 aboriginal rights, recognize these connections, and we
- 10 are puzzled by the attempt to separate air and water
- 11 quality from other development impacts.
- 12 Projects with both a federal permit and
- 13 a DEC 401 certification create special problems. It is
- 14 not clear in recent project descriptions just what the
- 15 scope of review is for the consistency review for such
- 16 projects. Without a clear understanding of which
- 17 activities are being reviewed, the consistency review
- 18 loses its effectiveness.
- 19 The state's interpretation of the
- 20 statutory changes in the ACMP would remove all air and
- 21 water quality issues from the consistency review
- 22 process. This will surely harm the environment,
- 23 because there are lots of air and water quality matters
- 24 not regulated by DEC, including activities in the outer
- 25 continental shelf.

- 1 The EIS should analyze a variety of
- 2 projects recently reviewed by DNR to determine what
- 3 aspects of air and water quality are no longer being
- 4 addressed, especially in respect to the elimination of
- 5 district enforceable policies for these matters.
- 6 Review for federal OCS projects present
- 7 a number of uncertainties that -- under the proposed
- 8 changes to the ACMP. These include the ability of
- 9 districts to participate in discussions about
- 10 consistency for activities that could affect air and
- 11 water quality. An oil spill in offshore waters is the
- 12 single most important threat to coastal resources and
- 13 uses, especially our subsistence way of life. As a
- 14 result of DNR's interpretation of the DEC carve-out,
- 15 there would be no opportunity for districts to develop
- 16 enforceable policies for these matters even though DEC
- 17 does not have any permitting authority for federal
- 18 waters. Also, there are no provisions in the
- 19 consistency review regulations for districts to comment
- 20 on DEC's consistency findings.
- 21 The EIS should include a complete
- 22 analysis of how state OCS reviews could occur and what
- 23 environmental effects might be without district
- 24 policies and district participation in the process.
- 25 Although DNR has been asked repeatedly to explain how

- 1 OCS reviews would occur, it has not yet done so. A
- 2 real-life project should be selected to determine how a
- 3 review would occur rather than a theoretical project.
- 4 And, you know, you can think about
- 5 those projects in Florida, you know, you -- the
- 6 government is aware of sharks, but tourists should be
- 7 allowed to swim as much as they want. You know, it's
- 8 -- you've got to think of something that really is
- 9 going to be -- you know, that takes to human life per
- 10 se that comes on voluntary to go out there. But this
- 11 is our way of life.
- 12 The North Slope Borough has
- 13 considerable concerns about now the cumulative impacts
- 14 of projects will be managed under the proposed changes
- 15 to the ACMP. The concerns include cumulative impacts
- 16 of multiple projects as well as the cumulative impacts
- 17 of all of the changes to the ACMP. The 2003 National
- 18 Research Council report on cumulative impacts on the
- 19 North Slope from oil and gas development should be
- 20 considered in the EIS, evaluated in light of the
- 21 changes to the ACMP, especially with consideration of
- 22 new restrictions on district enforceable policies. In
- 23 addition, the 2002 report of the United States General
- 24 Accounting Office about dismantlement, restoration and
- 25 rehabilitation of oil and gas facilities should also be

- 1 considered. And that's an after-the-fact thing that we
- 2 wonder about so much.
- 3 During the development of the EIS,
- 4 there should be a strong emphasis on involving tribal
- 5 governments. Lowell de Gotts (ph), he mentioned that.
- 6 This involvement is required in both the EIS
- 7 regulations as well as two executive orders. The
- 8 executive order by President Bush, reiterated by George
- 9 Bush. Clinton and Bush. Bush, Bush. So the issue is
- 10 being pushed by Bush. Since districts will not be able
- 11 to develop meaningful enforceable policies. Analysis
- 12 of impacts to native people should include a comparison
- 13 of project effects in areas with local government and
- 14 areas outside the organized borough, namely coastal
- 15 resource service reviews. To date, there is no
- 16 indication that OCRM has even considered a strategy for
- 17 environmental justice or government-to-government
- 18 consultation.
- 19 You know, in that executive order by
- 20 President Bush, for the benefit of more self-
- 21 determination, it states -- well, maybe we could draw a
- 22 boundary of the United States a little bit lower south
- 23 some place. But you know that's for, not to neglect
- 24 the fact, ICAS, Inupiat Community of the Arctic Slope
- 25 has a boundary, and it's not consultant under these

- 1 things, under these listings from Canada down to the
- 2 Norton Sound. The tribal government has a boundary
- 3 that size, and not considered, not consulted under the
- 4 executive order. We -- I think that, because I am the
- 5 president of that tribal government, regional tribal
- 6 government, that's why I was asking per entity. Now,
- 7 I'm still the same Arnold that stood up, but I still
- 8 have another role to play.
- 9 All of the changes to the ACMP
- 10 consistency review process should not -- should be
- 11 evaluated in the EIS to determine possible coastal
- 12 effects. The evaluation should include changes such as
- 13 the 90-day limit for consistency reviews, the addition
- 14 of new policies (sic) to the list of expedited reviews,
- 15 exclusion of shallow coal bed methane from ACMP
- 16 reviews, and the limitation of review projects in areas
- 17 outside the coastal zone.
- 18 The 2003 legislation included intent
- 19 language saying that as many projects as possible
- 20 should be added to the A or Ba lists without any dis --
- 21 without discussion of whether they are routine projects
- 22 or coastal impacts. The 2003 legislation also excluded
- 23 coal bed methane projects from consistency reviews,
- 24 again without any discussion of coastal impacts.
- The legislation also included (sic) the

- 1 possibility for reviews of any area inland of the
- 2 coastal zone boundary. While the regulation changes
- 3 made this spring appear to allow states to review
- 4 federal activities no matter where they occur, the
- 5 statute conflicts with the regulation change because it
- 6 excludes the possibility to review projects inland of
- 7 the coastal zone.
- 8 In summary, we encourage you to make
- 9 sure the EIS takes a comprehensive look at all proposed
- 10 changes to determine how they will affect coastal
- 11 resources and uses both individually and cumulatively.
- 12 My staff and I remain willing to offer
- 13 assistance to OCRM in the development of the EIS.
- 14 And on behalf of ICAS, I mirror this
- 15 comment, but request that extension be allowed to have
- 16 the tribal governments impacted to have a purview of
- 17 the EIS. And I'm glad he did mention that, because he
- 18 has been in my position as president of ICAS before.
- 19 And I thank you for the opportunity and
- 20 hopeful -- really want you to consider wholeheartedly
- 21 our position, because we have to live with the results.
- 22 We have to clean up the results if they are continued
- 23 here. We're mitigating and cleaning up the Husky oil
- 24 at PET IV issues right now. And you -- and, you know,
- 25 that this is the first thing -- I asked one of the

- 1 drillers that used to be at Prudhoe Bay, you know, why
- 2 would they abandon something like this and just close
- 3 it and he said, it's about -- at the time they were
- 4 storm closed. And I asked him, what's a storm close?
- 5 It's not a permanent fix. When you abandon a well and
- 6 you storm close it, you plug it real good. I think Mr.
- 7 Majors over there, Mark probably knows that stuff, but
- 8 it's not -- it's closed enough from the top to the
- 9 bottom that it's not going to leak oil, but it erodes.
- 10 It erodes right up to the cap, the bottom of the cap,
- 11 and when that happens, then it blows all over the area.
- 12 It's going to go away, but the opportune time is to
- 13 look at it while it's there and the kind of damage it's
- 14 doing to the habitat and the land and the ocean. It's
- 15 going to flow into the ocean. It's flowing to the
- 16 ocean. All drainages flow to the ocean.
- 17 Thank you for being here. Thank you
- 18 for giving me some time.
- 19 MR. SMITH: Thank you for your
- 20 comments.
- MS. OKASAKI: I know somebody from
- 22 the....
- 23 (Applause)
- MS. OKASAKI: Did you want to talk? I
- 25 know you came with (indiscernible, away from

- 1 microphone). Did you want to speak?
- MS. HEPA: No, I work for the North
- 3 Slope Borough, and I think the mayor's comments will
- 4 suffice. I don't have anything to add.
- 5 MS. OKASAKI: Okay. Did you sign in
- 6 here?
- 7 MS. SNYDER: Yeah.
- 8 MS. OKASAKI: Okay.
- 9 MS. SNYDER: I got some testimony.
- 10 MS. OKASAKI: Okay. Great.
- 11 MS. SNYDER: I'm going to be speaking
- 12 for Maggie Ahmaogak, who is the executive director for
- 13 the Alaska Eskimo Whaling Commission. This is a
- 14 prepared statement.
- 15 I am Meda Snyder. I work for the
- 16 Alaska Eskimo Whaling Commission as a liaison officer
- 17 for the MMS/OCS part of the leasing for AWC.
- 18 Before turning to the AWC's comments, I
- 19 would like to thank the Office of Coastal Resources
- 20 Management for holding this scoping meeting in Barrow.
- 21
- The environmental review that the
- 23 agency is undertaking here has very serious
- 24 implications for our community and it is very important
- 25 that you hear what our people have to say.

- 1 OCRM must identify and evaluate many
- 2 issues of this environmental review.
- 3 First and foremost, your agency must
- 4 evaluate the imp; acts our subsistence resources, our
- 5 hunting, and our culture that will result from the
- 6 state of Alaska's decision to centralize coastal
- 7 decision-making by effectively reducing input into
- 8 coastal management decisions. This includes addressing
- 9 the increased risk to the natural and human
- 10 environments of the Arctic, as well as to human life,
- 11 created by the state's actions.
- 12 The Arctic is home to many types of
- 13 wildlife: marine mammals, birds, fish, caribou, moose,
- 14 bears. Our people have depended on these natural
- 15 resources for thousands of years. In our bowhead
- 16 subsistence community, we depend especially on the
- 17 bowhead whale and our bowhead subsistence hunt, around
- 18 which our community has built and sustains its culture
- 19 and identity.
- 20 Oil and gas development, if not
- 21 properly carried out, could easily drive our bowhead
- 22 and other subsistence resources away. If this were to
- 23 happen, it would the end of our culture and our
- 24 community.
- 25 When Congress enacted the Coastal Zone

- 1 Management Act, it had the special needs of our
- 2 community and other local communities in mind. That is
- 3 why Congress directed states to provide for the
- 4 protection of ecological, cultural and historic assets
- 5 in areas of their coast line.
- 6 Congress also recognized that to
- 7 succeed in carrying out this and other directives of
- 8 the CZMA, states would need to employ a decentralized,
- 9 cooperative process for making coastal management
- 10 decisions.
- 11 That is why Congress directed states to
- 12 give timely and effective opportunities for local
- 13 government participation in coastal management
- 14 decision-making. And that is why Congress defined an
- 15 effective coastal management plan as one that
- 16 encourages the participation and cooperation of the
- 17 public and local governments in carrying out the
- 18 purposes of the CZMA.
- 19 In the CZMA's provisions on nonpoint
- 20 source pollution, Congress specifically requires states
- 21 to include in their coastal management plans mechanisms
- 22 to improve coordination between state and local
- 23 officials responsible for land use programs and
- 24 permitting, water quality permitting and enforcement,
- 25 habitat protection, and public health and safety,

- 1 through the use of joint project review or similar
- 2 mechanisms.
- 3 As these statements demonstrate,
- 4 Congress recognizes what we all know to be the case.
- 5 Local communities and their local governments have the
- 6 closest relationship to and the greatest interest in
- 7 the ecological, cultural and historic, as well as
- 8 economic, assets of their coastal areas. Therefore,
- 9 they have the greatest interest in the orderly
- 10 development of these coastal areas.
- Just as Congress intended, the North
- 12 Slope Borough, the AEWC, and other representatives of
- 13 our community have worked for more than a quarter of a
- 14 century with state and federal agencies, and developers
- 15 to carry out Congress's directives for consultation and
- 16 cooperation. Through these cooperative efforts, we
- 17 have built programs that facilitate the development of
- 18 North Slope nonrenewable resources while protecting our
- 19 community's nutritionally, culturally and historically
- 20 significant subsistence resources and practices.
- 21 In fact, by reducing conflicts between
- 22 developers and the local community, we have been very
- 23 successful in turning environmentally sound development
- 24 into a joint industry-community effort.
- 25 The CZMA and the Alaska Coastal

- 1 Management Plan, which previously included the North
- 2 Slope Borough's Coastal Management Plan, have been
- 3 critical to the success of our programs.
- 4 However, for reasons that we do not
- 5 understand, two years ago the state of Alaska chose to
- 6 ignore its own record of success in working with our
- 7 community and rewrote the ACMP, in fact -- in effect,
- 8 to centralize coastal zone decisions by removing all
- 9 meaningful opportunities for local district, including
- 10 North Slope, participation in coastal management
- 11 decision-making.
- 12 By closing off opportunities for local
- 13 involvement, as the new ACMP does, the state undermines
- 14 our industry-community cooperative efforts and
- 15 increases the environmental and human risks of arctic
- 16 oil and gas development.
- 17 Our community's ability to participate
- 18 in joint project review under the CZMA and the former
- 19 ACMP has never resulted in the unnecessary delay of a
- 20 project. What it has done, just as Congress intended,
- 21 is enable us to communicate to state agencies and
- 22 developers potential hazards that we can see, because
- 23 of our knowledge of the arctic environment.
- 24 In fact, I know of only one instance, a
- 25 few years ago, where a North Slope project was held up

- 1 and ultimately disapproved under the ACMP. In that
- 2 case, an operator planned to drill from an ice island
- 3 and to store oil in drums on the island if they found
- 4 oil. The federal and state agencies saw no hazard in
- 5 this plan and were prepared to approve it. However, in
- 6 consistency review, the North Slope Borough and the
- 7 AEWC were able to demonstrate to state officials the
- 8 danger of this project, which was to be located near
- 9 the shear ice zone where the circulating ice pack and
- 10 the shore-fast ice meet.
- 11 Had the operator gone ahead with this
- 12 project, it could have had serious environmental
- 13 consequences and could well have endangered the lives
- 14 of those who would have worked on the ice island.
- 15 A different operator later applied to
- 16 drill at the same site, using a bottom-founded drilling
- 17 structure. The North Slope Borough and the AEWC felt
- 18 that this structure would be able to withstand the
- 19 pressures of the shear ice zone and no consistency
- 20 questions were raised.
- 21 This incident provides a perfect
- 22 illustration of our community's approach to consistency
- 23 review. For us, the purpose of consistency review is
- 24 to ensure the safety and environmental integrity of a
- 25 project.

- 1 Without the opportunity for local
- 2 participation in the consistency review process, the
- 3 state closes itself off from critical local knowledge,
- 4 including this type of critical environmental and
- 5 safety information.
- 6 In its EIS, OCRM must evaluate the
- 7 environmental and human consequences of the state's
- 8 decision, in effect, to close off local input by
- 9 centralizing decision-making on matters affecting the
- 10 coastal zone.
- 11 The second set of issues OCRM must
- 12 evaluate includes the environmental and human
- 13 consequences of the state's actions in passing a
- 14 coastal management plan that ignores environmental
- 15 protections created by Congress in the CZMA and other
- 16 federal laws.
- 17 Congress recognizes how critical
- 18 subsistence hunting is to our people. This is why the
- 19 Marine Mammal Protection Act includes an exemption for
- 20 native Alaskans. This is why the federal government h
- 21 as entrusted the AEWC with local management of the
- 22 bowhead subsistence hunt, through our cooperative
- 23 agreement with NOAA. This is why Congress set
- 24 standards in the MMPA for protecting our marine mammal
- 25 subsistence hunting from the adverse effects of

- 1 offshore oil and gas activities.
- In addition, as noted above, when
- 3 Congress enacted the Coastal Zone Management Act, it
- 4 also had the special needs of our community and other
- 5 local communities in mind.
- 6 Each of our programs has a specific
- 7 purpose. The AEWC's cooperative agreement with NOAA
- 8 stems from the Alaska Native Exemption to the MMPA's
- 9 moratorium on taking marine mammals. Under this
- 10 cooperative agreement, the AEWC manages the bowhead
- 11 hunt, including how the hunt is conducted and how many
- 12 whales are taken by each village. In addition, k the
- 13 AEWC sponsors research on the health and structure of
- 14 our bowhead stock.
- Under Section 101(a)(5) of the Marine
- 16 Mammal Protection Act, the AEWC enters conflict
- 17 avoidance agreements with operators, after their
- 18 activities have been permitted. Through these
- 19 agreements, we coordinate subsistence hunting and
- 20 industrial activities to help ensure that everyone who
- 21 is using the ocean during the open water season can do
- 22 their jobs as effectively and efficiently as possible.
- 23 At the initiation of a project,
- 24 however, our community's principal opportunity for
- 25 input on project siting and on water and air quality

- 1 issues related to the project is through the North
- 2 Slope Borough's coastal management plan and consistency
- 3 review.
- 4 Today our community and our future are
- 5 at the mercy of state and federal decisions regarding
- 6 North Slope oil and gas development. If these
- 7 decisions do not take account of the established life
- 8 cycles of the arctic wildlife and the subsistence
- 9 patterns of our community and culture, the purpose
- 10 behind these other federal statues will be lost.
- 11 We no longer will have subsistence
- 12 hunts to manage in cooperation with NOAA and to protect
- 13 through private agreements such as conflict avoidance
- 14 agreements.
- 15 It is unlikely that Congress went to
- 16 the effort of directing states to make coordination
- 17 with local communities and joint project review a part
- 18 of their coastal management plans with the intent that
- 19 these requirements be met in name only. And it is
- 20 unlikely that Congress acted to protect our native
- 21 subsistence culture through the MMPA with the intent
- 22 that these protections be undermined by unilateral
- 23 state action. But that is exactly what is happening in
- 24 Alaska.
- 25 In its EIS, OCRM must evaluate the

- 1 environmental and human consequences this state action
- 2 as it relates to the reduced protection of our
- 3 subsistence resources and way of life, a way of life
- 4 that Congress has sought to protect through both the
- 5 CZMA and the MMPA.
- And, finally, in its EIS, OCRM must
- 7 provide measures to mitigate the adverse impacts to the
- 8 natural and human environments that would result from
- 9 the approval of this new state law.
- 10 The reality of North Slope oil and gas
- 11 development is that one community, the community formed
- 12 by our subsistence hunting villages, bears 100 percent
- 13 of the environmental and social risk associated with
- 14 this development, including adverse impacts to the
- 15 marine, coastal and human environments.
- 16 Included in these impacts is noise from
- 17 industrial operations that drive our marine mammals
- 18 away, and threaten our ability to take our subsistence
- 19 resources. WE also must live with the risk of oil
- 20 spills and with the emotional and social stress
- 21 experienced by our community due to the threat these
- 22 risks pose to our subsistence resources, lifestyle, and
- 23 culture.
- 24 While our community bears the risk of
- 25 oil and gas development, the overwhelming benefit,

- 1 especially from the OCS, goes to state and federal
- 2 governments, communities in other parts of the country,
- 3 and large corporations, many of them foreign-owned.
- 4 In 1994, a committee of the National
- 5 Research Council advised the Minerals Management
- 6 Service that the most effective way to address this
- 7 imbalance of risks and benefits is to work with our
- 8 community and the industry to reach agreement on all
- 9 controversial leasing, exploration and development
- 10 issues, including the mitigation of impacts and the
- 11 sharing of benefits.
- 12 The NRC committee went on to note that
- 13 one of the two most critical components of the OCS
- 14 decision-making process in the Arctic is meaningful
- 15 participation by the subsistence community in the
- 16 timing and siting of OCS-related industrial operations
- 17 and facilities. The other component is revenue
- 18 sharing.
- 19 As I have pointed out, for more than 25
- 20 years our community has worked cooperatively to design
- 21 and implement measures that mitigate the impacts of oil
- 22 and gas development on our subsistence resources and
- 23 our way of life.
- 24 As the NRC recognized, our ability to
- 25 participate in these decisions, itself, is a mitigation

- 1 measure since it gives us some ability to participate
- 2 in the process, as opposed to being helpless bystanders
- 3 and ultimately victims.
- 4 And up until now our most important
- 5 opportunities for participation and for developing
- 6 other forms of mitigation have been through our coastal
- 7 management plan.
- 8 In its EIS, OCRM must identify and
- 9 evaluate mitigation measures that the federal
- 10 government will offer to address our community's
- 11 effective loss of our ability to participate in the
- 12 management and decision-making process affecting our
- 13 coastal area.
- 14 Thank you.
- 15 (Applause)
- 16 (Anyone speaking away from the
- 17 microphone at this point is indiscernible due to native
- 18 singing and music next door)
- 19 MS. OKASAKI: Did you want to say
- 20 something?
- 21 MAYOR AHMAOGAK: Pardon me?
- MS. OKASAKI: (Indiscernible, away from
- 23 microphone)
- 24 MAYOR AHMAOGAK: Oh, no, no. Arnold,
- 25 Jr. gave my statement to you....

1 MS. OKASAKI: Okay. (Indiscernible, 2 away from microphone) 3 MAYOR AHMAOGAK: ....(indiscernible, 4 away from microphone) Mayor Ahmaogak. 5 MS. OKASAKI: (Indiscernible, away from 6 microphone) 7 MAYOR AHMAOGAK: I apologize. But Arnold, Jr. already had my statement. 9 MS. OKASAKI: Yes. 10 MAYOR AHMAOGAK: Okay. 11 MS. OKASAKI: I didn't know if you 12 wanted to say something.... 13 MAYOR AHMAOGAK: But I can.... MS. OKASAKI: ....a bit more. 14 MAYOR AHMAOGAK: .....say a few words. 15 16 MS. OKASAKI: Okay. 17 MAYOR AHMAOGAK: I'm sorry. I came in 18 my rubber boots. How are you doing, Bill? 19 UNIDENTIFIED VOICE: All right. How 20 are you today? 21 MAYOR AHMAOGAK: We've got about 10,000 22 bulls right on our river right now, and we're just 23 picking them like you wouldn't believe. It's unusual

24 to get bulls this time of the year. It just looked

25 like that whole countryside's just moving up there, and

- 1 that's where I just -- they picked me up from.
- 2 Teshekpuk Lake area.
- 3 Coastal Zone Management. I appreciate
- 4 -- I think Arnold Brower, Jr., one of my special
- 5 assistants, gave you my statements, written statements
- 6 already, and I'm happy for that. And I appreciate the
- 7 public hearing and taking testimony here from our
- 8 residents concerning changes to the coastal zone
- 9 management.
- 10 We have a lot of concern on the coastal
- 11 zone itself, especially when the legislation came out.
- 12 I believe at 171, am I correct? The concerns we had
- 13 was lack of enforcement, no habitat areas of any sort,
- 14 no local control. These are just some of the items
- 15 that we had in that legislation. Of course, we had
- 16 very little time to provide testimony. From my
- 17 observation that legislation, 171, was ramrodded
- 18 through the Legislature. That's my understanding, and
- 19 that's what I learned, and very little bit of testimony
- 20 was given on that piece of legislation. Hardly any of
- 21 the coastal districts that I'm aware of provided any
- 22 changes or tried to put any public comment to that.
- Now, our concern was local control, the
- 24 enforcement policies, the habitat, and these areas are
- 25 some of our concerns that we had. And we kept writing

- 1 letters also to OCRM, because we couldn't quite get
- 2 what we wanted out of that legislation. We're very
- 3 concerned when legislation goes like this and we don't
- 4 have very much ample time and they're ramrodding it,
- 5 and not having very much very public hearing across all
- 6 of the coastal districts, and that's the dilemma that
- 7 we had.
- 8 I don't want to put the state of Alaska
- 9 down to the barrel, but we tried anyway through
- 10 legislative process, through writing to the governor
- 11 and working with our legislators to try to make
- 12 changes, but I'm sure that we didn't receive any
- 13 changes, and I know that applications were submitted by
- 14 the state to OCRM. And to us those were significant
- 15 changes to the coastal zone management plan. I don't
- 16 think it was a minor adjustment like everybody's
- 17 claimed. I thought it was a major adjustment.
- 18 Probably requires a full, as I understand it, a full
- 19 EIS process. Am I correct there? That's my
- 20 observation.
- 21 Rest assured we're going to go and I
- 22 would ask for all coastal districts be given that ample
- 23 time to provide public testimony with the changes that
- 24 is here.
- We are making -- one of the other

- 1 dragging points we had was the deadline I believe to
- 2 submit our plans to the state of Alaska for all these
- 3 changes. That was another outstanding issue that we
- 4 had to work on to extend it I believe to July 6th of
- 5 2006 or so I believe. So the last time we went through
- 6 coastal zone changes, it took us -- and comply with the
- 7 state and federal government, it took us more than a
- 8 year at least from the local setting to pass it on to
- 9 the state and federal agencies, OCRM, if you will. And
- 10 this window had requested that -- we wanted that window
- 11 open and extended, and I think we got that.
- 12 But our problem with this coastal zone,
- 13 any time you take local control, enforcement, habitat
- 14 protections, these are only some of the real concerns
- 15 that we've got.
- 16 I've dealt with the oil and gas
- 17 industry for quite some time, and coastal zone is our
- 18 only tool available to try to mitigate some of the
- 19 adverse impacts that is here from the local
- 20 communities. Coastal zone management is our only
- 21 authority. I can't think of any other piece of
- 22 legislation that I could think of that we could hang
- 23 our hat to force the operators to, hey, listen to some
- 24 of these adverse impacts and let's talk mitigation. In
- 25 other words, we need some authority to let them come to

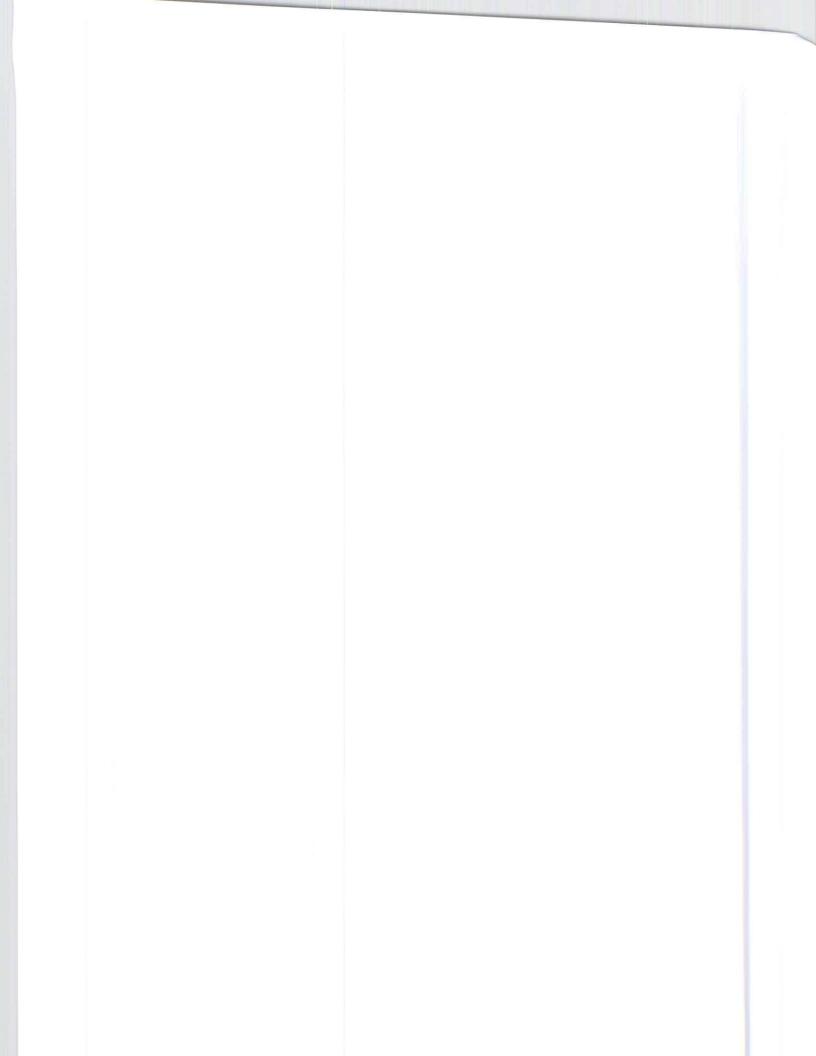
- 1 the table and address these impacts. Social impacts,
- 2 cultural impacts, economic impacts of all types are
- 3 certainly there. Cultural impacts, whaling,
- 4 subsistence impacts are -- were certainly there, for
- 5 many of the operators that are out there in offshore
- 6 areas. And coastal zone was our way of trying to
- 7 control some of that exploration and development that
- 8 takes place out there. That was the only authority
- 9 that we had.
- Now, if you take the local control,
- 11 enforcement and all of these other issues out of there,
- 12 then we have nothing to force the operator on the table
- 13 to negotiate and deal with those, and mitigate those
- 14 adverse impacts.
- Now, the only thing that we had -- the
- 16 only other item that we tend to use was the Marine
- 17 Mammal Protection Act, which through -- the operator
- 18 had to get a federal permit from the Office of
- 19 Protected Species, and that's the only other federal
- 20 authority that is here, under the Marine Mammal
- 21 Protection Act. Once they go to the Office of
- 22 Protected Species, where it's the operator, like
- 23 Conoco, has to get a permit to operate outside. That
- 24 calls for conflict avoidance agreements before they
- 25 even issued the permit, from the Office of Protected

- 1 Species.
- 2 That was our only other authority that
- 3 we had to try to control some of the development that
- 4 takes place out in the offshore areas, and especially
- 5 in the inland rivers also. This is just not talking
- 6 about offshore areas. We're talking about inland, too,
- 7 in some of the rivers that people depend on
- 8 subsistence.
- 9 But getting back, and I hope that this
- 10 changes that are submitted by the state of Alaska
- 11 adheres to some of the local control, enforcement,
- 12 habitat protection, and all of these things we keep
- 13 saying. Otherwise we have no leg to stand on. All the
- 14 development will be rushed, ramrodded, and we wouldn't
- 15 have no control, none whatsoever for subsistence, for
- 16 social or any other use, cultural impacts that we would
- 17 have. Coastal zone was our only authority.
- 18 Now, I keep hearing that the Coastal
- 19 Zone Management Act, I'm not going to point any names
- 20 at all, but they've been pointing at the Borough, to
- 21 us, from the local municipality and saying that we're
- 22 the problem that slows down some of the producers or
- 23 operators that are offshore through the coastal zone
- 24 management when they apply through our local districts
- 25 for -- under the coastal zone management under our

- 1 ordinance. What was the hanging spot of it was, or
- 2 what dragged things out is when we had some of these
- 3 appellant. When a consistency determination was made,
- 4 some of these environmentalists, conservationists would
- 5 file for an appeal to try to overturn the consistency
- 6 determination, and in fact it slowed down development.
- 7 That's what it did.
- 8 But when you're looking at it from the
- 9 North Slope Borough implementing the coastal zone
- 10 management and giving them, the operators, what they
- 11 wanted, that wasn't the slowing process. It was the
- 12 appeal process that slowed the whole thing down, when
- 13 the enviros (ph) and the conservationists appealed that
- 14 consistency determination at the local level. They can
- 15 appeal. It's not changing statutory authority to
- 16 streamline things. That's a proper poor way of looking
- 17 at it in my book.
- 18 The coastal zone as it was from the
- 19 local districts was operating fine. We were spitting
- 20 out permits under the coastal zone just like you
- 21 wouldn't believe. There was nothing dragging them.
- 22 But it was that appeal process where under our
- 23 ordinance the conservation -- those are some of the
- 24 loopholes also in the statutory language from the state
- 25 of Alaska that is there. That is the process that

- 1 slowed the whole process down. But it wasn't a normal
- 2 process once application is received, and issuing out a
- 3 permit from the coastal zone. That was just
- 4 expeditious in my book. But it -- the appealing
- 5 process.
- And when I saw 171, and they're saying,
- 7 well, we want to speed -- my thought was they were
- 8 going -- they were want to speed -- streamline the
- 9 whole process, so they take out local enforcement and
- 10 all of these other issues, that we really pay attention
- 11 to. That was our only leg to stand on. Enforcement,
- 12 habitat, and all of these other things. But yet it was
- 13 the appellant process when the conservationists or
- 14 Friends of the Earth or somebody like that appealed.
- 15 they're no friend of mind, I'll tell you that. I've
- 16 locked once with them before. But when they appeal,
- 17 that was what was dragging the feet.
- Now, I'm hoping that OCRM would really
- 19 take into consideration some of the public testimony
- 20 that is going to have to take place with this 171. I
- 21 think we've convinced the state. I've talked to the
- 22 commissioner, Tom Owen, about it, and we sat down with
- 23 our staff and educate him where the problems were at.
- 24 And by God, Tom finally understood. I think the last
- 25 meeting they had in Anchorage when they had some of the

- 1 coastal district -- before they had that meeting, our
- 2 staff came in there and showed them, this is how it
- 3 operates from our level, from the local districts, and
- 4 the commissioner finally woke up. We've been working
- 5 with the commissioner, and I think the commissioner
- 6 truly understands now, but I'm still leery of what the
- 7 application is there. I would like to take another
- 8 look of, to see if any of those concerns are still
- 9 outstanding out there.
- 10 If we take local control, local
- 11 enforcement, habitat protection and all of these out,
- 12 we're dead in the water. Who's going to do the
- 13 mitigation? Who's going to address the impacts? How
- 14 are you going to force the operator to get out there
- 15 and address these issues? I could tell you right now
- 16 we -- there's no authority for us to stand on from the
- 17 local level. And if things like that, the federal
- 18 agencies and the state and the local communities all
- 19 work together, I think we can come up with some
- 20 solutions. I'm not going to cut anybody down, but I
- 21 think we're still here, we're still going through this
- 22 process to make improvements, but no matter what you
- 23 do, don't cut out the municipalities. Don't do it on
- 24 the backs of municipalities. Even though I respect the
- 25 state, let's do it where everybody can live with each



- 1 other, and we'll have a pretty good piece of
- 2 legislation, and I've got to look at the state's
- 3 application a little bit more further, but that's the
- 4 sound -- that's about the way that I view things from
- 5 my -- from being a mayor, I've been -- gone through
- 6 these coastal zone for the last 15 years, and dealing
- 7 with offshore issues.
- 8 One issue that we had I believe, we had
- 9 an operator that was offshore and they were filing for
- 10 consistency determination from our borough, and the
- 11 exploratory drilling was going to happen right at the
- 12 shear zone of where the bowhead wells were migrating.
- 13 And they wanted to put a 10,000 gallon tank I believe,
- 14 or 5,000 gallon diesel tank, and some heavy equipment
- 15 that is out there. Our municipality said, heck, no.
- 16 No, it's not consistent with what we feel, because
- 17 you're too close to the shear zone, meaning where the
- 18 land-fast ice and the circulating ice pack opens up in
- 19 and out. The borough made a declaration and said it's
- 20 not consistent. Because of that 10, 5,000 gallon tank,
- 21 if that ice rubble starts up, you know where that tank
- 22 was going to go. It was going to go'into the ice, and
- 23 the diesel spill was going to go all over. So the
- 24 borough made a finding that said, it's nonconsistent.
- 25 Issues like that really woke my eyes up, because the

- 1 operator....
- 2 The other thing they wanted to do was
- 3 to build up a drilling platform using ice, pumping
- 4 saltwater ice, and then building it several layers.
- 5 And once that ice hits it from the circulating ice
- 6 pack, you can say good-bye to that drilling rig that's
- 7 going to be on top of it.
- 8 These were some of the issues that we
- 9 had to make these issues. And we made a nonconsistency
- 10 determination on those, because we know that ice in and
- 11 out like the back of our hands. We're whalers. We've
- 12 got prior use and occupancy out there. We know this
- 13 area.
- 14 So for whatever it's worth, and I urge
- 15 OCRM to take a -- and the state, we need to work
- 16 together. I think we could come up to some solution.
- 17 So I'm not cutting down anybody. But don't do it on
- 18 the backs of municipalities. We need that authority.
- 19 We need to force the operator to come out here and meet
- 20 us at the table. And I appreciate Conoco being right
- 21 here. Because we've worked with them before, and I
- 22 don't want to slow down the process. We support
- 23 exploration and development, but when it goes offshore,
- 24 the borough's position has been no support for any
- 25 offshore exploration and development, period. But we

- 1 work things around through coastal zone if we can do
- 2 that. That's our only leg to force the operator.
- 3 Maybe we can mitigate something. Conflict avoidance
- 4 agreements. Good neighbor policies.
- 5 Good neighbor policy is the first one
- 6 that -- policy that we developed for British Petroleum.
- 7 You know, it's what, six miles off shore. Four, five
- 8 miles. We made a consistency determin -- I mean a
- 9 conflict avoidance agreement that calls for -- on MMPA,
- 10 on the Marine Mammal Protection Act for the North Star.
- 11 The second one was a good neighbor policy that we
- 12 developed with BP.
- 13 The worst -- every offshore testimony
- 14 that you hear regarding any offshore exploration and
- 15 development, one of those deep concerns is an oil
- 16 spill. Noise impact. Subsistence impact. On and on
- 17 for how many years that I know. And the Minerals
- 18 Management oil spill risk model that they developed
- 19 were using Gulf of Mexico standards in Arctic
- 20 conditions. Our North Slope Borough scientific
- 21 advisory committee said that this MMS oil spill risk
- 22 analysis, or in the formula developed, but in that EIS
- 23 for the North Star was totally inadequate. And we have
- 24 copies if you need copies of that. But the point I'm
- 25 getting back to the North Star is when I mention a good

- 1 neighbor policy, the community, AEWC, the North Slope
- 2 Borough, some of the whaling captains got together and
- 3 we said, BP, we're worried about having an oil spill
- 4 out there. What about a good neighbor policy? So good
- 5 neighbor policy was to address any major oil spill if
- 6 it happens on that island. Small case scenario or
- 7 worst case scenario. We made some estimates of our
- 8 subsistence losses that we would have. We tried to
- 9 calculate that from the local level, looking at the
- 10 ooruk (ph), looking at the seal, looking at the whales,
- 11 looking at what these Eskimos put on the dinner table
- 12 each and every year, starting from Kaktovik, Nuiqsut,
- 13 Barrow and right out -- right on down the line, but for
- 14 small case scenario BP posted \$20 million financial
- 15 assurance in Wells Fargo Bank for the good neighbor
- 16 policy. But the 20 million is still on the balance
- 17 sheets of BP and it's their property. Only it becomes
- 18 the community's property when they declare an oil spill
- 19 that has happened, and we use that money to take the
- 20 subsistence hunters elsewhere to do their harvesting of
- 21 subsistence hunting. Ooruk, seal, polar bear, whale.
- 22 And that's what we were going to use that money. It's
- 23 already posted right here at Wells Fargo. BP signed a
- 24 financial assurance.
- 25 And if it was a worst case scenario

- 1 then all the communities and all parties, stakeholders,
- 2 would come together and try to make a dollar assessment
- 3 in how many impacted communities this oil spill would
- 4 affect. BP signed that.
- 5 And this is our way of trying to
- 6 mitigate oil spills if it happens in the Arctic.
- 7 And we've been dealing with these oil
- 8 and gas industries. I think there's ways that we're --
- 9 our position is known to offshore, but if we take
- 10 coastal zone away from us, we've got nothing to stand
- 11 on. No authority. We can't force the operator to come
- 12 on the table and talk about subsistence impact,
- 13 cultural impact, social impact.
- 14 Some of these people, our resident,
- 15 have lack of skill, meaning they can't even get an
- 16 eight to five job. They're not trained. They depend
- 17 on subsistence food. They go out to the ocean, they go
- 18 out to the rivers like where I'm at, and put food on
- 19 the table. And when they hear about offshore
- 20 development that takes place such as North Star or any
- 21 offshore development, these people start saying -- and
- 22 start losing confidence in themselves, because now they
- 23 can't provide any more food on the table for their
- 24 family. What do you think they do? Drugs, alcohol,
- 25 because you're going into a depression. That's why

- 1 we've got the substance abuse treatment centers,
- 2 counseling centers, detox centers and so forth. Their
- 3 fear of their world is crashing and caving in, and some
- 4 day he's not going to eat any more muktuk, he's not
- 5 going to eat any more polar bear. He can't put meat on
- 6 that table any more. He's got a social problem. And
- 7 the local community has to deal with that from
- 8 something that happens offshore. This is what we're
- 9 going through in the real world today, folks. It's a
- 10 real tough situation.
- 11 And being offshore, and I'm a whaler,
- 12 I'm a whaling captain. I've harvested quite a few
- 13 whales, especially in the falltime. When we have to go
- 14 -- normally we used to go only five miles out to get a
- 15 bowhead whale. And then when there's offshore impact
- 16 from seismic or from direct barge operations, those
- 17 whales are now 30 miles out. Now I've got to dig
- 18 deeper in my pocket to buy more gas to go further out.
- 19 And guess what, it gets real rough out there. Ten-foot
- 20 swells, 12-foot swells, going about five knots. These
- 21 are direct impact related issues that are coming out
- 22 from the activity from Prudhoe. Remember, the whales
- 23 are coming from the Canadian waters going west in the
- 24 falltime. And we're the last ones at the totem pole to
- 25 harvest these bowhead whales coming in from the

- 1 Canadian Arctic. We used to go just five miles right
- 2 off the point, I wish I had a map here, and harvest a
- 3 bowhead whale, just -- if there was no activity
- 4 offshore, none whatsoever. Now we've got to go 30
- 5 miles and then when we do reach them, they're skittish.
- 6 They're spooked. Their reaction is real different.
- 7 They're sensitive. And these people are wanting this
- 8 food for the rest of the winter to feed their -- to put
- 9 them in the ice cellar. They don't have jobs, eight to
- 10 five jobs like we do. And you take that away and then
- 11 when the guy feels that impact -- I see it firsthand
- 12 myself, being a whaling captain.
- 13
  I can't stop offshore oil and gas, and
- 14 I don't think none of us can. But these coastal zone
- 15 and these changes are very important to us to maintain
- 16 our subsistence lifestyle. We must address those
- 17 impacts and make financial resources available.
- 18 There's only one piece of energy-related legislation
- 19 that addresses impacts, and that's the National
- 20 Petroleum Reserve No. 4, and they provide impact funds
- 21 from any exploration and development on National
- 22 Petroleum Reserve. Impact funds are available to
- 23 impacted communities at the local level. We don't get
- 24 impact aid from the state of Alaska. We don't get
- 25 impact aid from any other -- like Minerals Management

1 for offshore exploration and development. Just the National Petroleum Reserve No. 4, and it's on the land. 3 We tried numerous times to make changes to the outer continental shelf legislation to provide some funding for these impact aid. Now it's the community that has to deal with these impacts. I'm going to stop right there, and I think Arnold, Jr. gave you the rest of my testimony, 10 but I'm still leery, folks. Even though we have 11 application, even though we're going through public 12 testimony. What's going to come out in the end? I 13 hope that we don't get cut off at the knees. I really 14 hope that we don't. Because I want those operators on 15 the table, like Conoco, like this guy, Mike Majors, up 16 there talking right to them and saying, hey, you've got 17 to address these impacts. The irony is, it's the oil

- 22 to address these issues. But, no, now it's the
- 23 community and the operator. But you take OCR -- you

18 and gas agencies that provide oil and gas leases. They

19 don't provide the funds. They don't want to address

20 these areas, but they leave it to the operator. Here

21 it should be the people that lease the offshore areas

- 24 take this coastal zone, then we've got nothing. Then
- 25 the operators are going to say, what the heck do we

- 1 need to meet you for? I don't want to get to that
- 2 level.
- 3 So I appreciate you all coming up here,
- 4 taking testimony. We tried so hard. We called for
- 5 testimony up here, and I'm sure people across the
- 6 coastal states are starving to have you guys visit
- 7 their community and provide testimony. And I think
- 8 that before any changes, major changes go through and I
- 9 hope you go through that process, because to me right
- 10 now, I want to work with the state. I want to work
- 11 with the federal agencies. I think we can come up with
- 12 solutions. And we can work in that direction and rest
- 13 assured, through EIS process we'll be providing public
- 14 comment. I'm tired of letter writing campaign to OCRM
- 15 and telling them my problems with this piece of HB 171,
- 16 and the changes that are taking place. Public hearing
- 17 in the coastal districts is very important. If we
- 18 can't have that process at the state level, legislative
- 19 process, and I appreciate OCRM coming up here to
- 20 provide us that. And you're the only ones that can
- 21 come up here and give us this opportunity for Christ's
- 22 sakes. So we're very serious about this coastal zone.
- 23 Don't do it off the backs of municipalities. Don't
- 24 take their authority away. Don't chop them off at
- 25 their knees.

- We'll be happy if it stays like that.
- 2 New additional changes on the coastal zone. We've got
- 3 until July to fix up our coastal zone and submit them
- 4 to the state. We're probably going to have to work
- 5 with the state to get them approved and then we've got
- 6 to go through the federal process for those changes
- 7 that we've got to make. It's a long, tedious process.
- 8 And the last change -- the first time we enacted our
- 9 coastal zone, that took a lot of time and public
- 10 hearing all over. Public hearing galore. And I hate
- 11 -- that's why this process needs time when we make
- 12 changes to our plans to be done by 2006 or 2007. It
- 13 takes time.
- 14 I'd like to see you guys flying when
- 15 it's 30, 40, 50 below out there, having public hearings
- 16 in the villages, wondering if you're going to come back
- 17 home. I mean, it's rough out there. It's not as easy,
- 18 just like on a commercial jet here. No way. You're
- 19 going out there with a little bush plane.
- 20 But thank you for coming and I think we
- 21 need to keep close contact, allow for public hearing,
- 22 and the opportunity to say some things. I'm very
- 23 grateful for that. At least something we can talk
- 24 about. But I think we can fix it and find solutions.
- 25 And if we could do it in the area of compromise and

- 1 civility, that's what we ought to work on. Thank you
- 2 very much for allowing me to talk, although Arnold, Jr.
- 3 gave my statements. So I don't want to talk here all
- 4 day long, take up your day. You can see I want to go
- 5 back fishing.
- 6 MR. SMITH: Thank you.
- 7 (Applause)
- 8 MAYOR AHMAOGAK: Is there anybody else
- 9 now?
- 10 SEN. OLSON: I'm Donald Olson, the
- 11 state senator from the area. It starts at the Canadian
- 12 Border, goes all the way down to the -- just above
- 13 Nunivak Island there.
- And one of the things that we saw in
- 15 this last Legislature was that this -- changes to the
- 16 coastal zone management plan was one of those very
- 17 sensitive issues that was controversial to a certain
- 18 degree. There were people that were hard over on one
- 19 side and other people that were hard over on the other
- 20 side. Certainly the Administration made its move, and
- 21 those of us that were out here where the rubber hits
- 22 the road, we made our move. And there certainly wasn't
- 23 a lot of agreement necessarily that was going on.
- 24 And the reason for that is many people
- 25 that were in charge of what the legislation had to do

- 1 with were not people that were in direct contact or
- 2 lived out in that part of the state, that lived out in
- 3 that area where the marine mammals, the animals that
- 4 they live off of and that they eat are getting their
- 5 food from. And because of that, there was this
- 6 passionate plea by people that were out there.....
- And one thing I want to say, first of
- 8 all, and I should have said this before I spoke, the
- 9 limited number of people that you see here is no
- 10 reflection of what the concern is about this issue that
- 11 is affecting us all. And many of the people that you
- 12 don't see here are out there harvesting some of what
- 13 the natural resources are this afternoon, out there in
- 14 this very area that we're dealing with and having to go
- 15 ahead and try and look at.
- 16 Obviously up here industry is
- 17 represented by the oil and the petroleum products.
- 18 Down where I was born and raised, Nome, we've seen what
- 19 industry has done for the last number of years when it
- 20 was related to gold mining. And there you see what has
- 21 happened for the last hundred years. When gold was
- 22 first discovered there 100 years ago, and we started to
- 23 go ahead and see some of the development that was
- 24 there, there are relics -- in the springtime you can
- 25 see where the water changes color, because of this dye

- 1 that was there that happened from some of the mining
- 2 left over stuff that we don't even know what it is.
- You dig up some of the earth from when
- 4 the military was there, and it's got these oil spills
- 5 where these underground pipelines and debris that was
- 6 buried during the war effort. Now, certainly we all
- 7 realize that war is a very important thing. But there
- 8 has to be an element of responsibility for those people
- 9 that put stuff there to make sure that it doesn't harm
- 10 the people that are going to be there for generations
- 11 to come.
- 12 And the same way we have the people --
- 13 or what we see the legislation doing is the
- 14 Administration has put forth legislation, House Bill
- 15 191 which has to do with something that is, we feel,
- 16 contrary to the best interest of those people that are
- 17 living here now. And those people that are to come,
- 18 and generations to come. And because of that, it's one
- 19 of those things that we feel are very important.  $\ensuremath{\text{I}}$
- 20 flew up from Nome, I've got my aide up here from
- 21 Kotzebue, just because of that.
- 22 Farther down the coast you've got the
- 23 fishing industry, very vital, that I represent as well.
- 24 Part of the area that I represent also is three miles
- 25 from Russia, and we've all seen some of the disastrous

- 1 industrial accidents, and not even accidents, some of
- 2 the waste that's gone on over there that affected the
- 3 reindeer herds, that affected the fish that are going
- 4 up the river to spawn, that affected the marine mammals
- 5 that are out there. It's one of those things that
- 6 needs to be taken very seriously.
- 7 Right now as we look at some of the
- 8 experiments that the U.S. government has, that started
- 9 with the military bases, right now they're having a
- 10 cleanup at Northeast Cape (ph) and that's fresh on my
- 11 mind, because in the little town of Golovin we are
- 12 being affected by the cleanup efforts that are going on
- 13 out there. Thank God they are being cleaned up.
- 14 Hopefully they will be cleaned up in a responsible
- 15 manner that has the least amount of impact to those --
- 16 the marine life that goes through there, because
- 17 everything that comes up here goes through the Bering
- 18 Straits. It's roughly 60 miles across.
- 19 Part of the area that I represent is
- 20 Diomede, and they are very sensitive. It's only three
- 21 miles from the Russian Big Diomede.
- 22 So as we look at that, we want to make
- 23 sure that 5, 10, 20, 50 years down the way that we have
- 24 prepared a pathway for people to have local input, for
- 25 people to say, yes, we want -- we can -- we are in

- 1 favor of this; no, we're not in favor of this, and then
- 2 try and work out something that's beneficial to all
- 3 people involved.
- 4 Now, certainly, I'm a businessman. I
- 5 own five corporations, and I have a pretty good idea on
- 6 how the businessman's mind worked. And one of the
- 7 issues that I've always been up against is what the
- 8 bottom line is. But there has to be a balance between
- 9 what's good for the economy and what's good for those
- 10 people that are directly affected by the animals that
- 11 they are harvesting out there. To make sure that -- as
- 12 a physician, I have certainly seen a number of genetic
- 13 diseases that are -- that have been brought about by
- 14 some of the environmental and some of the, I guess,
- 15 lack of concern from that standpoint.
- 16 So with that, I want to make sure -- I
- 17 want to thank you for coming up here. I certainly was
- 18 one of the proponents to try and extend the -- extend
- 19 some of the expiration dates of the legislation that
- 20 was going through, and I was thankful that there was at
- 21 least another ear to listen to what out concerns were
- 22 out there and related to this very, very sensitive
- 23 matter. Thank you very much.
- 24 (Applause)
- MS. OKASAKI: Last chance.

- MR. SMITH: Well, we're here until four or five.

  MS. OKASAKI: Until five.

  MR. SMITH: Until five so we'll still be around.

  MS. OKASAKI: Yeah. Thank you very much for coming.
- MR. SMITH: Thank you.

  9 (END OF PROCEEDINGS)

10

1	CERTIFICATE
2	
3	UNITED STATES OF AMERICA)
4	)ss.
5	STATE OF ALASKA )
6	
7	I, Joseph P. Kolasinski, Notary Public in and for
8	the state of Alaska, and reporter for Computer Matrix
9	Court Reporters, LLC, do hereby certify:
10	THAT the foregoing EIS Scoping Meeting on the
11	Alaska Coastal Management Plan was electronically
12	recorded by Computer Matrix Court Reporters, LLC on the
13	25th day of July 2005, commencing at the Heritage
14	Center in Barrow, Alaska;
15	That this hearing was recorded electronically and
16	thereafter transcribed under my direction and reduced
17	to print;
18	IN WITNESS WHEREOF, I have hereunto set my hand
19	and affixed my seal this 10th day of August 2005.
20	
21 22 23 24 25	Joseph P. Kolasinski Notary Public in and for Alaska My Commission Expires: 3/12/08